

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF OHIO
2 WESTERN DIVISION

3 UNITED STATES OF AMERICA, - Docket No. 3:06-CR-719
4 -
4 Plaintiff, - Toledo, Ohio
5 - May 28, 2008
5 v. - Trial
6 -
6 MOHAMMAD ZAKI AMAWI, et al., -
7 -
7 Defendants. -

8 VOLUME 58, TRANSCRIPT OF TRIAL
9 BEFORE THE HONORABLE JAMES G. CARR
10 UNITED STATES DISTRICT CHIEF JUDGE, AND A JURY

10 APPEARANCES:

11 For the Plaintiffs: United States Attorneys' Office
12 By: Thomas E. Getz
13 Justin E. Herdman
13 801 Superior Avenue, W
14 Cleveland, OH 44113
14 (216) 622-3840

15 U.S. Department of Justice
16 By: Jerome J. Teresinski
16 David I. Miller
17 10th & Constitution Ave, NW
17 Washington, DC 20530
18 (202) 353-3464

19 Office of the U.S. Attorney- Austin
19 By: Gregg N. Sofer
20 816 Congress Avenue
20 Austin, TX 78701
21 (512) 916-5858

22

23

24

25

1 For the Defendant Amawi: Office of the Federal Public
Defender - Cleveland

2 By: Amy B. Cleary
3 Jonathan P. Witmer-Rich
4 Edward G. Bryan
5 Timothy C. Ivey
6 750 Skylight Office Tower
7 1660 West Second St.
8 Cleveland, OH 44113
9 (216) 522-4856

10 Muawad & Muawad
11 By: Elias Muawad
12 36700 Woodward Avenue, Suite 209
13 Bloomfield Hills, MI 48304
14 (248) 594-4700

15 For the Defendant Kerger & Kerger
16 El-Hindi: By: Stephen D. Hartman
17 Suite 201
18 33 South Michigan Street
19 Toledo, OH 43602
20 (419) 255-5990

21 Boss & Vitou
22 By: Charles M. Boss
23 111 West Dudley Street
24 Maumee, OH 43537-2140
25 (419) 893-5555

26 Raslan, El-Kamhawy & Pla
27 By: Alek H. El-Kamhawy
28 Suite 3FE, 1700 East 13 Street
29 Cleveland, OH 44114
30 (216) 928-1500

31 For the Defendant David L. Doughten
32 Mazloum: 4403 St. Clair Avenue
33 Cleveland, OH 44103-1125
34 (216) 361-1112

35 Helmick & Hoolahan
36 By: Jeffrey J. Helmick
37 2nd Floor
38 1119 Adams Street
39 Toledo, OH 43624-1508
40 (419) 243-3800

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1

Mohammed Abdrabboh
1620 Ford Avenue
Wyandotte, MI 48192
(734) 283-8405

2

Court Reporter: Tracy L. Spore, RMR, CRR
1716 Spielbusch Avenue
Toledo, Ohio 43624
(419) 243-3607

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Proceedings recorded by mechanical stenography, transcript
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(Reconvened at 8:42 a.m.)

2

THE COURT: Are we ready to resume?

3

MR. SOFER: The government is.

4

MS. CLEARY: We are, Your Honor.

5

THE COURT: Ms. Cleary, why don't you come to the

6

podium. We'll get the interpreter and the jury.

7

You have been exchanging jury instructions?

8

MR. SOFER: We have been awaiting jury instructions

9

and waiting for so-called events.

10

THE COURT: When do you think you'll get those?

11

MR. HARTMAN: Soon.

12

(Jury in).

13

THE COURT: We're ready to resume. I remind the

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interpreter you remain under oath.

15

Can you please remind Mr. Amawi likewise, he

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remains under oath?

17

THE INTERPRETER: Judge, I didn't get a chance to

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tell him he's still under oath. Should I tell him?

19

THE COURT: Yes.

20

(The following witness testified through an

21

interpreter.)

- - -

22

ZAKI AMAWI, REDIRECT EXAMINATION

23

BY MS. CLEARY:

24

Q. Good afternoon, Mr. Amawi.

- 08:-41:-34 **1** A. Good afternoon.
- 00:04:56 **2** Q. Just a few questions for you.
- 00:05:03 **3** A. Go ahead.
- 00:05:04 **4** Q. Mr. Amawi, yesterday you testified in 2001 you contacted
- 08:-41:-34 **5** an immigration attorney.
- 00:05:16 **6** A. Yes.
- 00:05:17 **7** Q. And that was when you had returned to the United States?
- 00:05:23 **8** A. Yes.
- 08:-41:-34 **9** Q. Can you please tell me why you contacted an immigration
- 08:-41:-34 **10** attorney at that time?
- 00:05:39 **11** A. I called immigration attorney because I submitted
- 00:05:47 **12** documents to the immigration department and I did not -- the
- 08:-41:-34 **13** answer was late. They did not get back to me. Especially
- 08:-41:-34 **14** after September disaster.
- 00:06:10 **15** Q. And when you contacted that immigration attorney, did
- 08:-41:-34 **16** you use that attorney to help you submit any forms?
- 00:06:31 **17** A. No, she did not. The immigration attorney, she said
- 00:06:35 **18** follow up with the immigration department.
- 00:06:39 **19** Q. Okay. Thank you, sir. You spoke yesterday, sir, also
- 08:-41:-34 **20** about your time that you spent in the United Arab Emirates.
- 08:-41:-34 **21** Could you explain to the jury why you and others left the United
- 00:07:01 **22** Arab Emirates in 1999?
- 00:07:21 **23** A. It was not 1999, it was 1991.
- 08:-41:-34 **24** Q. I'm sorry, sir. Thank you for correcting me.
- 00:07:34 **25** A. Because of the Jordan position, because of the Jordan

-08:-41:-34 **1** position of the Gulf War. They deported all the Jordanians
00:07:58 **2** that are in United Arab Emirates. Especially the armed forces.

00:08:12 **3** **Q.** Thank you, sir. You also spoke yesterday about your
00:08:18 **4** observations regarding Mohammad watching military violence
00:08:22 **5** videos and beheading videos. Where did you see Mohammad
-08:-41:-34 **6** watching those videos?

00:08:43 **7** **A.** At our house.

-08:-41:-34 **8** **Q.** In Jordan?

00:08:48 **9** **A.** In Jordan, in our house in Jordan.

00:09:01 **10** THE WITNESS: Many times.

-08:-41:-34 **11** **A.** Many times. And this is normal over there because we

-08:-41:-34 **12** watch it in Al Jazeera, Jarash channel at that time, and

00:09:36 **13** Al-Rafadeen channel. There's a lot of channels, and they

00:09:39 **14** broadcast news every day based on a daily basis. And the

-08:-41:-34 **15** reason --

00:09:51 **16** MR. SOFER: Objection, Your Honor.

00:09:55 **17** THE WITNESS: Iraqis on the border of Jordan.

00:10:00 **18** MR. SOFER: Objection, Your Honor, as to the

-08:-41:-34 **19** reason.

00:10:03 **20** THE COURT: The jury will disregard the reference

00:10:06 **21** to the reason.

00:10:08 **22** BY MS. CLEARY:

00:10:08 **23** **Q.** Just to be clear, sir, what you're talking about are

-08:-41:-34 **24** television channels?

00:10:20 **25** **A.** Correct.

00:10:25 **1** MS. CLEARY: Thank you, sir.

-08:-41:-34 **2** THE COURT: Done?

00:10:29 **3** MS. CLEARY: Yes, sir.

-08:-41:-34 **4** THE COURT: No further questions. Any recross?

00:10:34 **5** MR. SOFER: Just one question, Judge.

00:10:39 **6** - - -

00:10:39 **7** ZAKI AMAWI, RECROSS-EXAMINATION

-08:-41:-34 **8** BY MR. SOFER:

-08:-41:-34 **9** **Q.** Good afternoon, sir. I just want to clarify the last

00:10:46 **10** thing that you said, that there are television channels which

00:10:49 **11** show various different kinds of violent acts, but didn't you two

00:10:55 **12** minutes ago say that you saw Mohammad Amawi watching these

00:11:00 **13** things on the internet? Yes or no, please.

00:11:15 **14** THE WITNESS: Yes.

00:11:16 **15** **A.** Yes.

00:11:18 **16** MR. SOFER: Thank you. Nothing further, Your

00:11:22 **17** Honor.

00:11:22 **18** THE COURT: Anything further?

-08:-41:-34 **19** MS. CLEARY: No, Your Honor.

-08:-41:-34 **20** THE COURT: Please tell Mr. Amawi that completes

00:11:27 **21** his testimony and thank you very much.

00:11:32 **22** **A.** Thank you.

00:11:37 **23** THE WITNESS: I just have a plea for His Honor, to

-08:-41:-34 **24** the Judge, please.

00:11:44 **25** MS. CLEARY: Mr. Amawi, this would not be the

-08:-41:-34 1 correct time for that.

-08:-41:-34 2 If you could send Ahmed Ibrahim to your seat, I
3 would appreciate it.

00:12:07 4 THE COURT: Ahmed Ibrahim. Tell Mr. Ibrahim first
-08:-41:-34 5 he must be sworn.

00:13:03 6 MS. CLEARY: We call Ahmed Ibrahim.

00:13:09 7 (The witness was sworn by the clerk.)

00:13:09 8 (The following witness testified through an
00:13:09 9 interpreter.)

00:13:40 10 - - -

00:13:40 11 AHMAD KAMEL MOHAMMAD IBRAHIM, DIRECT EXAMINATION
00:13:43 12 BY MS. CLEARY:

00:13:43 13 Q. Good afternoon, sir. My name is Amy Cleary. I am one
-08:-41:-34 14 of the attorneys representing Mohammad Amawi.

-08:-41:-34 15 Can you please tell the Court and the jury your
00:14:12 16 name and spell it?

00:14:20 17 A. My name is Ahmed Kamel Mohammad Ibrahim.

-08:-41:-34 18 Q. Can you please spell your first and last names?

00:14:31 19 A. Ahmed. First name is Ahmed. Spelled A-H-M-E-D.

00:15:05 20 THE INTERPRETER: He's not sure.

00:15:09 21 MS. CLEARY: Would the Court like us to pursue
-08:-41:-34 22 that?

-08:-41:-34 23 THE COURT: No, that's okay.

00:15:15 24 BY MS. CLEARY:

00:15:15 25 Q. Mr. Ibrahim, can you please tell us where you live?

-08:41:34 **1** A. I live in the village of Qumaim in Irbid in Jordan.

00:15:39 **2** THE COURT: Can the interpreter please spell that?

00:15:44 **3** THE INTERPRETER: I'll try. U-M-I-M (sic).

00:15:53 **4** BY MS. CLEARY:

00:15:53 **5** Q. Sir, how long have you lived there?

00:16:04 **6** A. I am 20 years old, so I would say most of my life with

-08:41:34 **7** the exception of five years that I lived in Saudi Arabia.

00:16:13 **8** Q. Mr. Ibrahim, are you currently married?

00:16:17 **9** A. Yes, I am.

00:16:18 **10** Q. Do have you any children?

00:16:24 **11** A. I have one child. It's a boy.

00:16:29 **12** Q. And, Mr. Ibrahim, are you currently employed?

00:16:43 **13** A. I work as an Imam for a Mosque. And I also am a

00:16:53 **14** merchant, commerce.

00:16:58 **15** Q. Sir, what do you sell?

00:17:08 **16** A. I own a pastry shop. And also I have a shop that sells

-08:41:34 **17** construction materials. And a small computer store.

00:17:30 **18** Q. Sir, can you tell the jury a little bit about what an

-08:41:34 **19** Imam does?

00:17:51 **20** A. All Muslims, they have a place for worship in almost

-08:41:34 **21** every village, and to organize these institutions, which are the

-08:41:34 **22** places of worship, they usually have somebody to oversee these

00:18:20 **23** places in terms of lectures and speeches. That would be Imam.

-08:41:34 **24** He's usually appointed. An Imam's role is usually to help

-08:41:34 **25** people, you know, guide them through and, you know, help them to

-08:41:34 **1** prevent, you know; you know, like to promote virtue and to, you
-08:41:34 **2** know, teach them, you know, the religion. As well as he's in
-08:41:34 **3** charge of running the daily affairs of the Mosque in terms of
00:19:09 **4** prayer time, cleaning, and maintenance, maintaining the place as
00:19:15 **5** a whole. That's briefly what an Imam does.

-08:41:34 **6** **Q.** Did you have receive any college training or education
00:19:25 **7** to be an Imam?

00:19:40 **8** **A.** Of course. An Imam has to have a Bachelor's degree from
00:19:45 **9** a university.

00:19:46 **10** **Q.** Sir, where did you receive your Bachelor's degree from?
00:19:54 **11** **A.** From a Jordanian -- the name is the Jordanian
00:20:02 **12** University, and it's in Jordan.

00:20:11 **13** **Q.** Mr. Ibrahim, do you know Mohammad Amawi?
00:20:16 **14** **A.** Yes, I do.

-08:41:34 **15** **Q.** How do you know him?
00:20:29 **16** **A.** Mohammad's mom is from Amman. When he was little, he
-08:41:34 **17** used to come to our neighborhood and play. And I'd say we have
-08:41:34 **18** more of a just casual relationship. And this relationship was
-08:41:34 **19** cut short when he went to America. When he came back in 2003,
-08:41:34 **20** and he came to the Mosque, we met in the Mosque. While I had
-08:41:34 **21** not really remembered him when he came, he approached me and he
00:21:45 **22** complimented me on my Qur'an recital. And we established a
-08:41:34 **23** relationship, still a casual relationship.

00:22:06 **24** THE INTERPRETER: If I might make a correction,
-08:41:34 **25** Your Honor. I think it was in 2003.

00:22:24 **1** BY MS. CLEARY:

00:22:24 **2** Q. Thank you, sir. When you reacquainted yourself with
00:22:28 **3** Mr. Amawi around 2003, what type of things would you two do
-08:-41:-34 **4** together?

00:22:53 **5** A. Normal things that friends do, we go out together; he
-08:-41:-34 **6** would come to my house, I would go to his house. Just, you
-08:-41:-34 **7** know, normal relation.

00:23:04 **8** Q. Did Mr. Amawi leave for America in 2003?

00:23:20 **9** A. Yes, I think in 2003 he went back to America.

00:23:24 **10** Q. What was your understanding of why Mr. Amawi returned to
00:23:28 **11** America?

00:23:36 **12** MR. TERESINSKI: Objection, relevance.

00:23:38 **13** THE COURT: I agree. I don't think he can testify
-08:-41:-34 **14** to that unless there's some foundation in terms of the
00:23:47 **15** conversation, statements that he made.

-08:-41:-34 **16** MS. CLEARY: Thank you, Your Honor. I'll move on.

00:23:52 **17** BY MS. CLEARY:

-08:-41:-34 **18** Q. Mr. Ibrahim, did you see Mr. Amawi again in 2005?

00:24:04 **19** A. Yes.

-08:-41:-34 **20** Q. And do you remember around what month that was in 2005?

00:24:14 **21** A. No, I don't. It's hard for me.

00:24:18 **22** Q. At that time when you saw Mohammad in 2005, did you meet
-08:-41:-34 **23** a man named Darren Griffin?

00:24:35 **24** A. Yes.

00:24:36 **25** Q. Did you know Darren Griffin by any other name?

00:24:48 **1** A. The name is known as Bilal.

00:24:51 **2** Q. How did you meet Mr. Griffin?

00:25:04 **3** THE INTERPRETER: He's asking how do you mean?

-08:41:-34 **4** BY MS. CLEARY:

-08:41:-34 **5** Q. Where did you meet Mr. Griffin?

00:25:16 **6** A. The first time I met Mr. Griffin was in the Mosque. He
00:25:20 **7** came in with Mohammad.

00:25:22 **8** Q. Mr. Ibrahim, did you ever have an opportunity to travel
00:25:26 **9** with Mr. Amawi and Mr. Griffin?

00:25:42 **10** A. Yes. Yeah, if you would call it, yes, we took a trip
-08:41:-34 **11** to Aqaba, which is an area in Jordan.

00:25:52 **12** Q. What was the purpose of going to Aqaba, sir?

00:26:03 **13** A. Oh, it was just like, pleasure, for fun.

00:26:18 **14** Q. Mr. Ibrahim, I'm going to ask that you look at Exhibit
00:26:22 **15** A-33.

00:26:24 **16** MS. GRILL: Amy, do you want know show it in the
00:26:27 **17** camera so everybody knows we're looking at the same thing?

00:26:30 **18** MS. CLEARY: I would appreciate it if you could
00:26:34 **19** quickly show it to the camera.

00:26:37 **20** (Document shown.)

00:26:39 **21** MS. CLEARY: Thank you.

00:26:52 **22** BY MS. CLEARY:

00:26:52 **23** Q. Mr. Ibrahim, can you identify on this map where Aqaba
00:27:01 **24** is?

00:27:12 **25** A. (Motioning). There it is, right at the bottom.

-08:-41:-34 **1** Q. Thank you, sir. What is the body next to Aqaba?

00:27:31 **2** A. The Red Sea.

00:27:33 **3** Q. It is fair to say, sir, Aqaba is a resort area?

00:27:44 **4** A. Yes, it is.

00:27:46 **5** MS. CLEARY: Your Honor, if I could publish this to
-08:-41:-34 **6** the jury by handing it to them?

00:27:52 **7** THE COURT: Any objection?

-08:-41:-34 **8** MR. TERESINSKI: I'm sorry, I couldn't hear.

00:27:57 **9** MS. CLEARY: I'll publish this to the jury.

00:28:00 **10** MR. TERESINSKI: That's fine. No objection.

00:28:02 **11** THE COURT: Ms. Cleary, if you could keep your

-08:-41:-34 **12** voice up.

-08:-41:-34 **13** MS. CLEARY: I'm so sorry, Your Honor.

00:28:15 **14** BY MS. CLEARY:

00:28:15 **15** Q. Mr. Ibrahim, who planned the trip to Aqaba?

00:28:23 **16** A. I did.

00:28:24 **17** Q. And who originally went on the trip to Aqaba with you?

00:28:38 **18** A. It was myself, Mohammad Amawi, Darren Griffin, and
00:28:44 **19** another friend of mine whose name is Mustafa Ghazagha.

-08:-41:-34 **20** THE INTERPRETER: His name -- I'll take a crack.

-08:-41:-34 **21** I will say G-H-A-G-H -- G-H-A-Z-A-G-H-A, something like that.

00:29:11 **22** BY MS. CLEARY:

00:29:11 **23** Q. And these additional men who joined you on the trip,

-08:-41:-34 **24** where along the trip did they join you?

00:29:19 **25** THE INTERPRETER: What was the question?

00:29:21 **1** BY MS. CLEARY:

00:29:21 **2** Q. These additional men that joined you on the trip, where
-08:-41:-34 **3** did the men join you?

00:29:45 **4** A. First we went to a city or a town called Madaba.

-08:-41:-34 **5** THE INTERPRETER: M-A-D-A-B-A, something like that.

-08:-41:-34 **6** A. We went to this town, and we met up with two other of my
-08:-41:-34 **7** friends that invited us for dinner over there.

00:30:12 **8** THE INTERPRETER: And he mentioned their names,
-08:-41:-34 **9** Your Honor. Do you want their names?

00:30:15 **10** THE COURT: Please.

00:30:21 **11** A. First one is Adel Gandaba, A-D-E-L, G-A-N-D-A-B-A.

00:30:29 **12** MR. SOFER: Can you repeat that, please?

00:30:34 **13** THE INTERPRETER: G-A-N-D-A-B-A. I don't know.

00:30:40 **14** I'm just trying to... the best of my knowledge.

-08:-41:-34 **15** THE COURT: Phonetic spelling is fine. You can
00:30:48 **16** continue.

00:30:53 **17** A. The second person's name was Issa, I-S-S-A, Bward,

00:31:00 **18** B-W-A-R-I-D.

00:31:07 **19** BY MS. CLEARY:

00:31:07 **20** Q. Were these friends that you had for a long time, sir?

00:31:15 **21** A. No, they were just college friends.

00:31:21 **22** Q. Sir, I'm going to ask you to look at what's been marked
-08:-41:-34 **23** as Government's Exhibit 125AG.

00:31:52 **24** A. Yes.

00:31:53 **25** Q. Do you recognize this picture, sir?

- 00:31:58 **1** A. Yes, I do.
- 08:-41:-34 **2** Q. Are you in this picture?
- 00:32:06 **3** A. Yes.
- 08:-41:-34 **4** Q. Where are you in the picture?
- 00:32:12 **5** A. I am the guy standing in the middle. I'm the taller
- 08:-41:-34 **6** guy next to Mohammad.
- 08:-41:-34 **7** Q. On the top right?
- 00:32:25 **8** A. Yes.
- 00:32:27 **9** MS. CLEARY: Your Honor, if I may publish this to
- 08:-41:-34 **10** the jury as well.
- 00:32:32 **11** THE COURT: You may.
- 00:32:33 **12** MR. TERESINSKI: No objection, Your Honor. We've
- 08:-41:-34 **13** already put it into evidence.
- 00:32:44 **14** BY MS. CLEARY:
- 00:32:44 **15** Q. Mr. Ibrahim, where was that picture taken?
- 00:32:59 **16** A. This was taken in this Madaba in the valley of Almoouga,
- 08:-41:-34 **17** A-L-M-O-O-U-G-A.
- 00:33:16 **18** Q. That was taken in the course of the trip to Aqaba?
- 00:33:26 **19** A. Yes.
- 00:33:27 **20** Q. Sir, when you arrived at Aqaba, what did you and your
- 00:33:31 **21** friends do?
- 00:33:43 **22** A. We arrived there kind of late. So we ate and then we
- 08:-41:-34 **23** went looking for a place to stay.
- 00:33:54 **24** Q. And did you spend the night then that first night?
- 00:34:01 **25** A. Yes, we did.

-08:41:34 **1** Q. And what did you do the very next day?

00:34:11 **2** A. We went to the sea, and we swam in the sea. And then

-08:41:34 **3** we took a ride in a glass boat and we watched the fish.

00:34:25 **4** Q. Are you referring to -- I'm sorry?

00:34:31 **5** A. And then we went to the market.

00:34:46 **6** Q. Sir, how long did you stay there before returning home?

00:35:03 **7** A. I think the whole trip took three days, but I would say

-08:41:34 **8** in Aqaba we stayed about a day and a half.

00:35:11 **9** Q. Sir, at any point on that trip did anyone mention

-08:41:34 **10** anything to you about traveling to Iraq?

00:35:27 **11** A. No, nobody.

00:35:30 **12** Q. Sir, at any point on that trip did anyone mention

00:35:33 **13** anything to you about traveling to Syria?

00:35:45 **14** A. No.

-08:41:34 **15** MS. CLEARY: Sir, I have no further questions for

00:35:50 **16** you, but the government attorney may. So if you could sit

00:36:04 **17** there for just a minute.

00:36:17 **18** MR. TERESINSKI: Your Honor, the United States has

-08:41:34 **19** no questions for the witness.

00:36:29 **20** THE COURT: Tell him that. Tell him that

00:36:31 **21** concludes his testimony, and thank you very much.

00:36:42 **22** MS. CLEARY: Ms. Grill, could you send in the next

-08:41:34 **23** witness?

-08:41:34 **24** THE JUROR: Could I get the last name of the

00:36:59 **25** gentleman that just talked.

00:37:02 **1** MS. CLEARY: I-B-R-A-H-I-M, as in Mary.

00:37:15 **2** THE COURT: Counsel, can you come up for a second?

00:37:18 **3** MS. CLEARY: We'll be with you in one minute, sir.

00:39:50 **4** (Whereupon the following discussion was had at the

-08:41:-34 **5** bench outside the hearing of the jury:)

-08:41:-34 **6** THE COURT: The other interpreter mentioned she's

-08:41:-34 **7** distracted by your linguist talking while she's interpreting.

-08:41:-34 **8** So if he could write out his notes.

-08:41:-34 **9** MR. SOFER: Our linguist has -- I remember hearing

-08:41:-34 **10** that yesterday. Our linguist said I would represent to the

-08:41:-34 **11** Court no more than three or four words yesterday to us while

-08:41:-34 **12** this is going on. I do notice that this is something --

-08:41:-34 **13** occasionally some sort of muffled sound that comes out of the

-08:41:-34 **14** video.

-08:41:-34 **15** MR. WITMER-RICH: I believe what's going on is when

-08:41:-34 **16** there's a translation given over the audio, that translation

-08:41:-34 **17** comes out of the telephone receiver that they're listening to

-08:41:-34 **18** and then is rebroadcast back to us. So there's a little bit of

-08:41:-34 **19** a circular loop going on which is causing a little bit of a

-08:41:-34 **20** problem.

-08:41:-34 **21** THE INTERPRETER: It's the interpreter behind of

-08:41:-34 **22** me. Every time I'm talking or interpreting anything he's trying

-08:41:-34 **23** to correct me by talking back after me. And writing something

-08:41:-34 **24** down -- I heard him and I keep hearing him. I don't have

-08:41:-34 **25** anything on my ears; I can hear him behind of me.

-08:41:34 1 MR. TERESINSKI: He's not correcting her, per se.

-08:41:34 2 If he thinks that there might be something that's incorrectly

-08:41:34 3 interpreted he might whisper it to myself or Mr. Sofer.

-08:41:34 4 THE COURT: If he could write it out, that would be

-08:41:34 5 helpful. Because she says she's distracted.

-08:41:34 6 MR. SOFER: Again, certainly not -- no one's trying

-08:41:34 7 to influence the interpreter. We caught some mistakes.

-08:41:34 8 Hopefully we'll continue to be --

-08:41:34 9 THE COURT: No problem.

-08:41:34 10 Will you please ask the interpreter to tell the

00:40:06 11 next witness he has to be sworn to tell truth?

00:40:13 12 Will he raise his right hand?

00:40:34 13 (The witness was sworn by the clerk.)

00:40:34 14 (The following witness testified through an

00:40:34 15 interpreter.)

00:41:04 16 - - -

00:41:04 17 MOSUL SULTAN AL-RAWASHDEH, DIRECT EXAMINATION

-08:41:34 18 BY MS. CLEARY:

-08:41:34 19 Q. Good afternoon, sir.

00:41:11 20 A. Good afternoon.

00:41:12 21 Q. My name is Amy Cleary. I'm one of the attorneys who

-08:41:34 22 represents Mohammad Amawi.

00:41:25 23 A. Hello.

-08:41:34 24 Q. Sir, can you please tell us your name, and please spell

-08:41:34 25 it for us?

- 00:41:36 **1** THE WITNESS: Okay. Mosul Sultan Al-Rawashdeh.
- 00:41:50 **2** M-O-H-A double M-A-D. S-U-L-T-A-N.
- 08:-41:-34 **3** A. This is my father's name. A-L-R-A-W-A-S-S-H-D-E-H.
- 08:-41:-34 **4** This is the family name.
- 00:42:33 **5** THE COURT: I'm sorry, can you say it a little more
- 00:42:37 **6** slowly, please? A-L...
- 00:42:40 **7** THE INTERPRETER: A-L-R-A-W-A-S-H-D-E-H.
- 00:42:50 **8** BY MS. CLEARY:
- 00:42:50 **9** Q. Thank you, Mr. Al-Rawashdeh. Can you please tell us
- 08:-41:-34 **10** where you live now?
- 00:43:01 **11** A. I am from Irbid, residence.
- 08:-41:-34 **12** Q. How long have you lived there?
- 00:43:09 **13** A. About a year ago.
- 00:43:12 **14** Q. And, I'm sorry, sir, you've only lived there a year?
- 00:43:25 **15** A. Originally from Qumaim village, but I am one of Irbid
- 00:43:30 **16** residents.
- 00:43:31 **17** Q. And have you lived in Jordan then all your life?
- 00:43:37 **18** A. Yes.
- 08:-41:-34 **19** Q. Are you married, sir?
- 00:43:41 **20** A. Yes.
- 00:43:42 **21** Q. How long have you been married?
- 00:43:45 **22** A. Since 17, 8, 2007.
- 00:43:54 **23** Q. Congratulations, sir.
- 08:-41:-34 **24** A. Thank you.
- 00:43:57 **25** Q. Are you employed, sir?

-08:41:34 **1** A. Yes.

-08:41:34 **2** Q. And what do you do?

00:44:08 **3** THE INTERPRETER: Your Honor, can I ask him again
-08:41:34 **4** what he said?

00:44:11 **5** THE COURT: Yes, of course.

00:44:16 **6** A. I work in the computer field and specifically in the
00:44:29 **7** laptops.

-08:41:34 **8** BY MS. CLEARY:

-08:41:34 **9** Q. How are you working this deal? Do you own any
-08:41:34 **10** businesses?

00:44:41 **11** A. Yes. I do have a laptop shop in Irbid and I do have
-08:41:34 **12** another shop for desktop in the village of Koverkasub
00:45:05 **13** (phonetically) .

00:45:05 **14** Q. Do you have any other stores?

00:45:08 **15** A. No.

00:45:09 **16** Q. Okay. Sir, I'm going to ask you to look at Exhibit A-20.
00:45:23 **17** Do you recognize this document, sir?

00:45:30 **18** A. Yes.

00:45:32 **19** THE INTERPRETER: Your Honor, I did not hear it.
-08:41:34 **20** Can I ask him again?

-08:41:34 **21** THE COURT: Of course.

00:45:39 **22** A. This is my advertisement.

-08:41:34 **23** BY MS. CLEARY:

-08:41:34 **24** Q. And for which store is this for, sir?

00:45:48 **25** A. This is for the laptop shop in Irbid.

00:45:59 **1** MR. TERESINSKI: Can I see it?

-08:-41:-34 **2** THE COURT: Of course.

-08:-41:-34 **3** MR. TERESINSKI: We had a copy. No objection.

-08:-41:-34 **4** BY MS. CLEARY:

00:46:15 **5**

00:46:15 **6** Q. Sir, I'm also going to ask you to look at Exhibit A-21,

-08:-41:-34 **7** and I'm going to ask you to turn to page 10, I believe.

-08:-41:-34 **8** Do you recognize what you see on page ten there,

00:46:53 **9** sir?

00:46:53 **10** A. This is an offer, sales offer.

-08:-41:-34 **11** Q. What is the sale offer for, sir?

00:47:03 **12** A. For the laptop shop in Irbid.

00:47:07 **13** Q. Thank you, sir.

00:47:12 **14** MS. CLEARY: Your Honor, may I publish this also?

00:47:15 **15** THE COURT: You may.

00:47:24 **16** BY MS. CLEARY:

00:47:24 **17** Q. And, sir, I'm going to ask you to look at Exhibit A-31.

-08:-41:-34 **18** Do you recognize this document?

00:47:42 **19** A. What document?

00:47:45 **20** Q. Do you have Exhibit A-31?

00:47:53 **21** A. Yes.

-08:-41:-34 **22** Q. Do you recognize what you're seeing on A-31?

00:48:01 **23** A. This is a business card.

-08:-41:-34 **24** Q. For who?

00:48:09 **25** A. This is mine. This is under my name. This is for my

-08:-41:-34 **1** shop in Irbid, the laptop shop.

00:48:16 **2** Q. Thank you, sir.

00:48:19 **3** MS. CLEARY: Your Honor, may I publish this also?

00:48:21 **4** THE COURT: You may.

00:48:22 **5** MR. TERESINSKI: No objection, Your Honor.

00:48:29 **6** BY MS. CLEARY:

-08:-41:-34 **7** Q. Sir, how are your businesses doing?

-08:-41:-34 **8** MR. TERESINSKI: Objection, relevance.

-08:-41:-34 **9** THE COURT: He can answer.

00:48:37 **10** A. Good. Thank God. Excellent.

00:48:42 **11** BY MS. CLEARY:

00:48:42 **12** Q. Sir, you have attended college?

00:48:45 **13** A. Yes.

-08:-41:-34 **14** Q. Where did you go to school?

00:48:54 **15** A. I studied chemistry in Al Yarmuk University.

00:49:00 **16** Q. And did you receive your degree, sir?

00:49:06 **17** A. Yes. Bachelor.

00:49:10 **18** Q. Sir, do you know Mohammad Amawi?

00:49:15 **19** A. Yes, of course I do.

-08:-41:-34 **20** Q. When did you first meet him?

00:49:28 **21** A. The first time I met him, that was back in 2004.

00:49:33 **22** Q. And did you ever have a chance to meet him again?

00:49:41 **23** A. Yes, I seen him in 2005.

00:49:44 **24** Q. Where did you see him, sir?

00:49:50 **25** A. In my village, Qumaim.

00:49:54 **1** Q. And what did you talk to Mr. Amawi about at that time?

00:50:07 **2** A. We spoke to each other. We spoke to each other about a

-08:-41:-34 **3** business we were -- planned to do together.

-08:-41:-34 **4** Q. What type of business?

00:50:23 **5** A. The computer field, the desktop first and then the

00:50:27 **6** laptop, and then we were supposed to start in Qumaim and then

-08:-41:-34 **7** we'll spread out in Irbid.

00:50:35 **8** Q. And what was going to be your role in that computer

-08:-41:-34 **9** business?

00:50:51 **10** A. I will work with my experience, and Mohammad will

-08:-41:-34 **11** finance the project with money from United States and the

00:50:59 **12** equipment -- he will finance the project and he will bring the

-08:-41:-34 **13** equipment from United States. He promise me to bring a laptop.

-08:-41:-34 **14** MR. TERESINSKI: Objection.

-08:-41:-34 **15** THE WITNESS: From the United States.

-08:-41:-34 **16** THE INTERPRETER: From the United States.

-08:-41:-34 **17** THE COURT: Ladies and gentlemen, you can attribute

-08:-41:-34 **18** the statement from Mr. Al-Rawashdeh as a statement having been

-08:-41:-34 **19** made but not proof that he made such a promise.

00:51:28 **20** MS. CLEARY: Thank you, Your Honor.

-08:-41:-34 **21** BY MS. CLEARY:

-08:-41:-34 **22** Q. Sir, do you have an understanding about the cost

00:51:32 **23** difference between laptops in Jordan and laptops in America?

00:51:45 **24** A. Of course, I do. This is my job.

00:51:49 **25** Q. And can you explain the cost difference to the jury?

00:51:59 **1** A. There are prices difference when it comes to electronic
00:52:13 **2** between Jordan and United States. About 300 dollars because of
-08:-41:-34 **3** the taxes.

00:52:21 4 Q. The 300 dollar difference sir, is that 300 dollars

00:52:25 5 cheaper in Jordan or 300 dollars cheaper in America?

6 A 300 dollars the laptop is cheaper in United States

7 than Jordan. So 300 dollars more expensive in Jordan.

8 Sir, when you developed this plan for a store with

9 Mohammad — when you developed this plan for a store in Jordan

10 what was to be the purpose of the store?

10 What was to be the purpose of the store?
11

00:53:15 11 MR. TERESINSKI: Objection

00:53:15 11 MR. TERESINSKI: Objection if it calls for hearsay.

00:53:18 **12** Anticipating.

-08:-41:-34 13 THE COURT: I think he can describe what he

00:53:21 **14** understood to be their expectation. His expectation.

00:53:27 15 MS. CLEARY: I can clarify that.

00:53:29 16 THE COURT: Please.

00:53:30 17 BY MS. CLEARY

18 Q. When you developed a plan for a store in Jordan with

-08-41-34 19 Mohammad what did you expect the purpose of the store would be?

20 A Business money for both of us

21 Q Was it for computer maintenance?

num 22 A All computer services Selling and buying and

www. 23 maintenance

24 Did you look for a place to have your business?

25 A Yes I did

-08:41:34 1 Q. And did you eventually find a place?

00:54:32 2 A. Yes, we selected a shop that was existent in Qumaim, the

-08:41:34 3 village.

00:54:40 4 Q. Sir, I'm going to ask you to look at Exhibit A-25.

-08:41:34 5 Do you recognize that document, sir?

00:54:55 6 A. Yes.

00:54:56 7 Q. And can you please tell the jury what that document is?

00:55:05 8 A. It's a rental agreement between me and Mohammad, so me

-08:41:34 9 and Mohammad is one party, and the rentee is another party.

00:55:25 10 Q. And this is for a property in Qumaim?

00:55:33 11 A. Yes. Yes.

-08:41:34 12 Q. And can you please tell the jury when this was signed?

00:55:51 13 A. 2006. The date, it's written down; it was late 2005,

00:56:09 14 early 2006.

00:56:12 15 Q. Thank you, sir.

-08:41:34 16 MS. CLEARY: Your Honor, may I publish this?

00:56:16 17 THE COURT: You may. What language is it in?

00:56:20 18 MS. CLEARY: Arabic.

00:56:22 19 MR. TERESINSKI: Objection, Your Honor. If we

00:56:24 20 could see you at sidebar.

00:56:26 21 (Whereupon the following discussion was had at the

00:57:46 22 bench outside the hearing of the jury:)

00:57:46 23 MR. TERESINSKI: Your Honor, the main objection and

-08:41:34 24 the basis for my objection is this is a completely -- a complete

-08:41:34 25 document in complete Arabic. I don't know how the jury is

-08:41:-34 **1** supposed to understand this or understand what this is.

-08:41:-34 **2** THE COURT: Is this going to be translated?

-08:41:-34 **3** MS. CLEARY: No, I wanted him to identify it and

-08:41:-34 **4** recognize it as a contract for the store and for the jury to see

-08:41:-34 **5** it was a real tangible document.

-08:41:-34 **6** THE COURT: Okay. I'll let it in. It's a rental

-08:41:-34 **7** contract; is that right?

-08:41:-34 **8** MS. CLEARY: Correct. A lease agreement.

-08:41:-34 **9** (End of side-bar discussion.)

00:57:53 **10** BY MS. CLEARY:

-08:41:-34 **11** Q. Mr. Ibrahim (sic), I'm going to ask you now to look at

00:57:57 **12** Exhibit 24. Do you recognize this document?

-08:41:-34 **13** A. Yes.

00:58:15 **14** Q. What is this document?

00:58:22 **15** A. This is the advertisement for the laptop shop that was

00:58:27 **16** supposed to happen, me and Mohammad.

00:58:33 **17** THE INTERPRETER: I'm sorry, Your Honor, can I ask

-08:41:-34 **18** him again what he said?

00:58:42 **19** A. But unfortunately, he got arrested before the project

00:58:46 **20** was done.

00:58:48 **21** MS. CLEARY: Your Honor, may I publish this flyer

-08:41:-34 **22** to the jury?

00:58:51 **23** THE COURT: You may.

00:58:59 **24** BY MS. CLEARY:

00:58:59 **25** Q. Sir, I'm going to ask you to now look at Exhibit 35.

00:59:11 **1** THE COURT: Why don't we wait a minute while the
-08:-41:-34 **2** jury's looking at the materials so they can concentrate on the
-08:-41:-34 **3** testimony.

00:59:21 **4** MS. CLEARY: Just a moment, sir.

00:59:27 **5** MR. TERESINSKI: Objection, Your Honor. Could I
-08:-41:-34 **6** see what exhibit she's referring to?

00:59:32 **7** THE COURT: Sure. Of course.

00:59:44 **8** (Document shown to government counsel).

01:02:18 **9** BY MS. CLEARY:

01:02:18 **10** Q. Sir, the exhibit that you have, A-35, do you recognize
-08:-41:-34 **11** that?

01:02:36 **12** A. Yes, this is an advertisement for the computer shop that
-08:-41:-34 **13** we were supposed to work together, me and Mohammad with.

01:02:42 **14** Q. And where -- what city is this picture taken in?

01:02:51 **15** A. The entrance of Farasey Village (phonetically).

01:02:59 **16** MS. CLEARY: Your Honor, may I publish this?

01:03:09 **17** THE COURT: Did you see it, Mr. Teresinski?

-08:-41:-34 **18** MR. TERESINSKI: I did today, Your Honor. No
01:03:14 **19** objection.

01:03:16 **20** MS. CLEARY: I'm going to give the jury a moment to
-08:-41:-34 **21** look at this picture. I'll be right with you.

01:03:22 **22** THE WITNESS: Okay.

01:03:23 **23** A. Okay.

01:05:34 **24** BY MS. CLEARY:

01:05:34 **25** Q. Sir, just a final question.

01:05:39 **1** A. Go ahead.

01:05:41 **2** Q. At any time during your discussion with Mohammad Amawi,
-08:41:-34 **3** did you ever discuss going to Iraq?

01:05:55 **4** MR. TERESINSKI: Objection as to what Mr. --
-08:41:-34 **5** calling for hearsay.

-08:41:-34 **6** THE COURT: Pardon me?

-08:41:-34 **7** MR. TERESINSKI: Objection to the extent it calls
-08:41:-34 **8** for hearsay.

-08:41:-34 **9** THE COURT: I disagree. We'll see what the answer
01:06:06 **10** is, then I'll rule. Go ahead. He may answer.

01:06:15 **11** A. Never. We were working together, so how it is that I go
-08:41:-34 **12** to Iraq if we are working together?

-08:41:-34 **13** MS. CLEARY: Thank you. The government attorney
-08:41:-34 **14** may have questions for you, so if you could sit there for just a
-08:41:-34 **15** minute.

01:06:39 **16** MR. TERESINSKI: May I proceed, Your Honor?

01:06:41 **17** THE COURT: Of course.

01:06:42 **18** - - -

01:06:42 **19** MOSUL SULTAN AL-RAWASHDEH, CROSS-EXAMINATION
-08:41:-34 **20** BY MR. TERESINSKI:

-08:41:-34 **21** Q. Good morning, sir -- actually, good afternoon where you
-08:41:-34 **22** are. I only have a couple very brief questions, okay. My name
-08:41:-34 **23** is Jerry Teresinski. I represent the United States of America.

01:07:06 **24** A. Hello.

-08:41:-34 **25** Q. I'd like as much as possible if an answer calls for a

01:07:10 **1** yes or no that you answer yes or no. However, I really have
01:07:20 **2** some basic -- just a couple questions.

01:07:30 **3** You testified on direct examination -- strike that.
01:07:33 **4** You testified just a few moments ago that you saw
01:07:37 **5** and discussed with Mohammad Amawi opening up this computer store
01:07:43 **6** sometime in 2005 and 2006. Can you give us a date, a more
-08:-41:-34 **7** precise date in 2005, 2006 when you discussed opening up this
-08:-41:-34 **8** computer store?

01:08:18 **9** THE INTERPRETER: I'm sorry, can I ask him for the
01:08:21 **10** last part of the sentence?

01:08:22 **11** THE COURT: You may.

01:08:34 **12** A. Preparation of -- for opening the shop took a long time
-08:-41:-34 **13** because we were waiting for his friend to get us the laptops
-08:-41:-34 **14** from the United States. But it was late of 2005, early of
01:08:47 **15** 2006.

-08:-41:-34 **16** BY MR. TERESINSKI:

-08:-41:-34 **17** Q. So that's when you discussed opening up the store, in
-08:-41:-34 **18** late 2005. Can you give us a month in 2005? Was it October?

01:09:16 **19** A. It was a long period of time. I do not recall
01:09:20 **20** specifically the date.

01:09:23 **21** Q. Was it -- give me a season. Was it the fall or was it
-08:-41:-34 **22** the winter of 2005?

01:09:40 **23** A. Summertime.

01:09:41 **24** Q. Summertime. So maybe August of 2005?

01:09:50 **25** A. I don't recall.

01:09:52 **1** Q. Maybe September of 2005?

01:09:55 **2** MR. HARTMAN: Objection.

01:09:56 **3** THE COURT: Sustained. He doesn't recall. He's
-08:41:-34 **4** testified as to a season.

-08:41:-34 **5** BY MR. TERESINSKI:

-08:41:-34 **6** Q. So you don't know the exact date you first started
01:10:03 **7** talking about this. Is that what you're telling me?

01:10:16 **8** A. I don't recall the date or the time because I was
01:10:19 **9** focusing specifically on the business itself.

-08:41:-34 **10** Q. That was your focus, the business?

01:10:27 **11** A. Yes, me and Mohammad.

01:10:29 **12** Q. I didn't ask that, but that was your focus?

01:10:35 **13** A. Yes.

01:10:39 **14** MR. TERESINSKI: One moment, Your Honor. No
-08:41:-34 **15** further questions, Your Honor.

01:10:45 **16** MS. CLEARY: Nothing further, Your Honor.

-08:41:-34 **17** THE COURT: Tell him there are no further
-08:41:-34 **18** questions, thank you for his testimony, please.

01:10:58 **19** THE INTERPRETER: Thank you.

01:11:03 **20** MR. WITMER-RICH: May we approach, Your Honor?

01:11:05 **21** THE COURT: Sure.

-08:41:-34 **22** (Whereupon the following discussion was had at the
01:19:14 **23** bench outside the hearing of the jury:)

01:19:14 **24** MR. WITMER-RICH: At this point we have a couple
-08:41:-34 **25** we'd like to play from the transcript which I think the

-08:41:-34 1 government has agreed they will simply allow us to play the clip
-08:41:-34 2 and identify the date that it's occurring for the jury.

-08:41:-34 3 MR. SOFER: I would just like to see the transcript
-08:41:-34 4 again, if you don't mind, before we --

-08:41:-34 5 MR. WITMER-RICH: Then additionally we've been
-08:41:-34 6 trying to finalize the creation of the CDs that we need to put
-08:41:-34 7 into evidence, the discs from both cross-examination and the few
-08:41:-34 8 things we played here. And so it might be a good time to take
-08:41:-34 9 a break right now. Our tech guy is downstairs; I think he's
-08:41:-34 10 done with it.

-08:41:-34 11 THE COURT: Do you have any further witnesses?

-08:41:-34 12 MR. BRYAN: We need to take a break to talk.

-08:41:-34 13 THE COURT: But do you have any further witnesses?
-08:41:-34 14 MR. BRYAN: We may. Probably not. But if we do
-08:41:-34 15 it's not a lengthy witness. If we do, Your Honor, they're not
-08:41:-34 16 lengthy.

-08:41:-34 17 THE COURT: Fine. But are we done with the
-08:41:-34 18 overseas witnesses?

-08:41:-34 19 MR. BRYAN: Yes.

-08:41:-34 20 THE COURT: Are you prepared to go with rebuttal?

-08:41:-34 21 MR. SOFER: We need to have a further discussion
-08:41:-34 22 with the Court and Counsel before we're prepared to do anything,
-08:41:-34 23 Judge, including a question about whether or not there's going
-08:41:-34 24 to be, among other things, a request for an entrapment charge.
-08:41:-34 25 So we -- I think we worked -- we worked until midnight last

-08:41:-34 1 night trying to put something together.

-08:41:-34 2 THE COURT: If you do have rebuttal, can we do it
-08:41:-34 3 today, I hope?

-08:41:-34 4 MR. SOFER: It depends on what the defense asks in
-08:41:-34 5 terms of an entrapment charge largely.

-08:41:-34 6 THE COURT: If your exhibits are not completely
-08:41:-34 7 ready to go, what I would suggest is that you simply rest
-08:41:-34 8 subject to the admission of exhibits. And when we next get
-08:41:-34 9 back together with the jury, we can go into structure and so
-08:41:-34 10 forth. It's no big deal. I don't want to spend a lot of time
-08:41:-34 11 about worrying that it be right this instant.

-08:41:-34 12 MR. SOFER: We want to see the list to go through
-08:41:-34 13 them the way we did with Mr. Hartman.

-08:41:-34 14 THE COURT: Do you know what exhibits you are going
-08:41:-34 15 to be --

-08:41:-34 16 MR. WITMER-RICH: Yes.

-08:41:-34 17 THE COURT: Why don't you give them the list right
-08:41:-34 18 now.

-08:41:-34 19 MR. WITMER-RICH: Will do.

-08:41:-34 20 THE COURT: There's a matter I want to discuss with
-08:41:-34 21 Mr. Sofer just briefly, if I may, ex parte. Okay. If we can
-08:41:-34 22 do that now, that would be great. I'll excuse you for a
-08:41:-34 23 half-hour.

-08:41:-34 24 MR. WITMER-RICH: That would be plenty, Your Honor.
-08:41:-34 25 (End of side-bar discussion.)

-08:41:-34 1 THE COURT: Ladies and gentlemen, we're going to
-08:41:-34 2 take a break right now. There are some matters that have to be
-08:41:-34 3 tended to. We'll be at least 10, 15, maybe a bit later than
-08:41:-34 4 that before we get underway. If it's going to be much later
-08:41:-34 5 than that, 10:30 or so, I'll let you know. Thank you.

-08:41:-34 6 MR. IVEY: The request doesn't have to do with
-08:41:-34 7 evidence in the trial. It's out of the presence of the jury.
-08:41:-34 8 In the event Mr. Amawi is convicted in this case, he may not see
-08:41:-34 9 his father again, so we wanted to know, out of the presence, if
-08:41:-34 10 he could use the closed circuit to let them say a few words to
-08:41:-34 11 each other right now.

-08:41:-34 12 MR. SOFER: Assuming Mr. Amawi is not going to
-08:41:-34 13 testify, even if he does, I don't have a problem.

-08:41:-34 14 THE COURT: That's fine. I assume the marshals
-08:41:-34 15 would like to be consulted at least about that. I'll talk to
-08:41:-34 16 Chris. But the one thing that I think would be appropriate,
-08:41:-34 17 though I realize the risk is very slight, but if an
-08:41:-34 18 interpreter --

-08:41:-34 19 MR. SOFER: We could provide an interpreter for the
-08:41:-34 20 marshals.

-08:41:-34 21 THE COURT: In the event there's a concern there
-08:41:-34 22 may be something improper said. I can't imagine that there
-08:41:-34 23 would be.

-08:41:-34 24 MR. SOFER: To me that's a security question that I
-08:41:-34 25 would want to defer to the marshals and the FBI on. I'll ask

-08:-41:-34 1 the FBI while they're here.

-08:-41:-34 2 THE COURT: I'm just saying if they want an
-08:-41:-34 3 interpreter standing by, that's fine.

-08:-41:-34 4 MR. SOFER: We have our translator here. Would
-08:-41:-34 5 you object to that?

-08:-41:-34 6 MR. WITMER-RICH: Having the interpreter present so
-08:-41:-34 7 he can hear what's being said?

-08:-41:-34 8 THE COURT: So there's no concern.

-08:-41:-34 9 MR. WITMER-RICH: No objection, Your Honor.

-08:-41:-34 10 MR. SOFER: I'll talk to the FBI. See if they
-08:-41:-34 11 want to do that.

-08:-41:-34 12 THE COURT: Do you want the courtroom closed for
-08:-41:-34 13 that?

-08:-41:-34 14 MR. IVEY: I think that would be appropriate.

-08:-41:-34 15 It's a personal thing.

-08:-41:-34 16 MR. SOFER: We don't object to that.

-08:-41:-34 17 THE COURT: When you're ready to go with that -- if
-08:-41:-34 18 I can have your attention, please. There's been a request that
-08:-41:-34 19 Mr. Amawi and his father can say a few words to each other. I
-08:-41:-34 20 think it's appropriate that they do so in circumstances that
-08:-41:-34 21 enable them to communicate, in a sense, privately; although
-08:-41:-34 22 we'll have to have a marshal and interpreter here. So when
-08:-41:-34 23 that is ready to occur, anybody who's here as a spectator will
-08:-41:-34 24 have to step outside the courtroom. Okay. And we'll be
-08:-41:-34 25 shutting off the outside feed as well.

-08:41:34 1 When you're ready to go with that, just let Mr.
-08:41:34 2 Bianco know or whoever can take care of that. And when that
-08:41:34 3 occurs, you'll be asked to step outside the courtroom.
-08:41:34 4 (Recess taken.)
01:48:49 5 (The following discussion was had at the bench:)
01:48:49 6 THE COURT: So, what's the game plan?
-08:41:34 7 MR. WITMER-RICH: We're going to play one clip that
-08:41:34 8 we talked to the government about, and then we're going to --
-08:41:34 9 subject to admission of our exhibits later, we're going to rest
-08:41:34 10 at that point.
-08:41:34 11 THE COURT: I should probably speak to them -- Mr.
-08:41:34 12 Amawi is not going to testify?
-08:41:34 13 MR. WITMER-RICH: Correct.
-08:41:34 14 THE COURT: I should probably have a session with
-08:41:34 15 him. Is there a deputy marshal. What I would propose doing is
-08:41:34 16 doing that in chambers, and --
-08:41:34 17 (A U.S. Marshall is present for the remainder of
-08:41:34 18 the conversation.)
-08:41:34 19 THE COURT: I'd like to go back in chambers with
-08:41:34 20 Mr. Amawi just briefly for about three minutes to confirm it's
-08:41:34 21 his choice not to testify. I'd like to do that right now
-08:41:34 22 before the jury comes back. Okay.
-08:41:34 23 You all can come. I'd suggest it might be better
-08:41:34 24 just to have his lawyers and one of you, if that's okay.
-08:41:34 25 MR. BOSS: We need not be there, I think.

-08:41:34 1 MR. SOFER: Can I just -- can Counsel -- I know
-08:41:34 2 they've given it to us already -- can you give us a transcript
-08:41:34 3 of that clip you want to play so we can look at it? During this
-08:41:34 4 ten minutes we'll try to multitask and get it done.

-08:41:34 5 THE COURT: Why don't you set that up for them and
-08:41:34 6 then come on back in.

-08:41:34 7 (The following discussion was had in chambers:)

-08:41:34 8 THE COURT: Mr. Amawi, your attorneys have
-08:41:34 9 indicated that they will be resting and that you will not be
-08:41:34 10 testifying; is that correct?

-08:41:34 11 DEFENDANT AMAWI: Yes.

-08:41:34 12 THE COURT: You were here I think when I talked to
-08:41:34 13 Mr. Mazloum and Mr. El-Hindi about the rights that they had to
-08:41:34 14 testify and so forth, so you're aware that you do have the right
-08:41:34 15 to testify?

-08:41:34 16 DEFENDANT AMAWI: I understand.

-08:41:34 17 THE COURT: Do you also understand that the
-08:41:34 18 decision not to do so -- and I can imagine it was a very
-08:41:34 19 difficult decision -- ultimately it's yours alone to make? Do
-08:41:34 20 you understand that?

-08:41:34 21 DEFENDANT AMAWI: I understand.

-08:41:34 22 THE COURT: And, obviously, you should never make a
-08:41:34 23 decision of that sort or any other crucial decision without
-08:41:34 24 talking to your attorneys, but it's ultimately up to you. Okay.
-08:41:34 25 And have you decided not to testify?

-08:41:34 **1** DEFENDANT AMAWI: Yes, I have.

-08:41:34 **2** THE COURT: Are you confident that you've had

-08:41:34 **3** enough opportunity to talk about that decision with your

-08:41:34 **4** lawyers?

-08:41:34 **5** DEFENDANT AMAWI: Yes, I have.

-08:41:34 **6** THE COURT: Are you -- Because you're welcome to

-08:41:34 **7** talk with them further if you want.

-08:41:34 **8** DEFENDANT AMAWI: I think they made the decision,

-08:41:34 **9** so we're good.

-08:41:34 **10** THE COURT: Pardon?

-08:41:34 **11** THE WITNESS: We're good.

-08:41:34 **12** THE COURT: You say they made the decision? But as

-08:41:34 **13** I say, it's your decision to make. You can take their advice

-08:41:34 **14** into consideration, obviously.

-08:41:34 **15** DEFENDANT AMAWI: I understand.

-08:41:34 **16** THE COURT: But you should not make that decision

-08:41:34 **17** only because that's what they tell you they think you should do.

-08:41:34 **18** You have to be persuaded in your own mind that given the

-08:41:34 **19** options, none of which may be very attractive, I understand,

-08:41:34 **20** that that is the better or best option.

-08:41:34 **21** DEFENDANT AMAWI: Can I have one minute with them?

-08:41:34 **22** THE COURT: Of course.

-08:41:34 **23** (Discussion had off the record.)

-08:41:34 **24** THE COURT: You've had a chance to talk?

-08:41:34 **25** DEFENDANT AMAWI: Yes, we did.

-08:41:34 1 MR. BRYAN: What we discussed, what we've been
-08:41:34 2 discussing --

-08:41:34 3 THE COURT: I don't want any attorney/client.

-08:41:34 4 MR. BRYAN: I appreciate that, Your Honor, but as
-08:41:34 5 it relates to where we are right now in the case, based upon the
-08:41:34 6 evidence that's been presented by the evidence, based upon the
-08:41:34 7 other evidence that has come into the case, and what we
-08:41:34 8 anticipate we would be able to accomplish with Mr. Amawi
-08:41:34 9 testifying, we, as a team, came to the conclusion that it would
-08:41:34 10 be in Mr. Amawi's best interest not to testify. And I believe
-08:41:34 11 he's prepared to agree with that conclusion.

-08:41:34 12 DEFENDANT AMAWI: Yes, I do.

-08:41:34 13 THE COURT: I assume, also, it's fair to point out
-08:41:34 14 that -- I assume your decision ultimately is also or has also
-08:41:34 15 taken into account some of my rulings which have not always been
-08:41:34 16 favorable to your theory of defense and defense. I think
-08:41:34 17 that's an important consideration because in the event those
-08:41:34 18 rulings are not correct, to the extent that they bore on your
-08:41:34 19 decision, in the event of a conviction, then I think it's fair
-08:41:34 20 that the record show that that was a consideration as well.

-08:41:34 21 DEFENDANT AMAWI: It's because of where we stand
-08:41:34 22 right now I made the decision not to take the stand.

-08:41:34 23 THE COURT: But it is your decision?

-08:41:34 24 DEFENDANT AMAWI: Yes, it is.

-08:41:34 25 THE COURT: That's what matters most. That's the

-08:41:-34 1 only thing that matters.

-08:41:-34 2 Now, would you like me to remind the jury that Mr.

-08:41:-34 3 Amawi is entitled to do that? That's up to you. If you want

-08:41:-34 4 to talk with him a few more minutes, let me know. I will be

-08:41:-34 5 giving that instruction as part of the instructions. It's up

-08:41:-34 6 to you.

-08:41:-34 7 MR. BRYAN: If we could have a minute.

-08:41:-34 8 THE COURT: Candidly, I mean what I say -- I

-08:41:-34 9 happen to think that when any defendant exercises a fundamental

-08:41:-34 10 Constitutional right, it's -- that is what makes the

-08:41:-34 11 Constitution work ultimately. Okay. That's why it's so

-08:41:-34 12 important that the jury not even think about that. And I'm

-08:41:-34 13 glad to remind them. If not, I will next week. Good enough.

02:03:04 14 (End of in-chambers discussion.)

02:03:20 15 (Jury exits the courtroom.)

02:13:41 16 THE COURT: It's been my practice that working on

-08:41:-34 17 the charge involves only counsel. So if anybody has a strong

02:13:47 18 view on that, let me and the marshals know, particularly given

02:13:55 19 some of the uncertainties of our timetable, that's what I would

-08:41:-34 20 propose doing. That's the way I've always done it.

02:17:12 21 (Jury enters the courtroom.)

02:17:14 22 THE COURT: Ladies and gentlemen, I didn't expect

02:17:16 23 we'd take nearly as long as we did, but there were a number of

02:17:20 24 things we were able to address. So I hope you understand that

-08:41:-34 25 from time to time. I do apologize for the delays. Okay.

02:17:37 **1** Counsel?

02:17:38 **2** MR. WITMER-RICH: Thank you. We have one audio

-08:41:-34 **3** clip we'd like to play for the jury. And the clip is from

02:17:46 **4** April 7, 2005. It's a brief conversation between Mohammad

-08:41:-34 **5** Amawi and Darren Griffin. The 1D is 1D-43. It's Exhibit

-08:41:-34 **6** A-1-25-2. If we want to get our headphones on.

02:18:21 **7** THE COURT: I'm sorry, can you give me that

02:18:24 **8** 1D-number?

02:18:25 **9** MR. WITMER-RICH: 1D-43.

-08:41:-34 **10** THE COURT: Is there a clip number?

02:18:31 **11** MR. WITMER-RICH: Clip 2.

-08:41:-34 **12** THE COURT: And the date once again?

02:18:35 **13** MR. WITMER-RICH: April 7, 2005.

02:18:39 **14** THE COURT: Has this previously been heard by the

02:18:42 **15** jury?

02:18:43 **16** MR. WITMER-RICH: The beginning has previously been

-08:41:-34 **17** heard by the jury, then there's some additional material that

-08:41:-34 **18** has not been heard.

02:18:53 **19** (Audio is played.)

02:23:36 **20** THE COURT: Okay.

02:23:38 **21** MR. BRYAN: Your Honor, at this time, subject to

02:23:40 **22** the admission of the Amawi exhibits, the Amawi team rests.

02:23:44 **23** THE COURT: Okay. And Mr. Amawi won't be

-08:41:-34 **24** testifying. Any further witnesses?

-08:41:-34 **25** MR. BRYAN: No further witnesses.

02:23:55 **1** THE COURT: Ladies and gentlemen, as I previously
02:23:57 **2** instructed you during voir dire and from time to time during the
-08:-41:-34 **3** trial that the fact that an individual stands upon his
02:24:06 **4** well-known Constitutional right to put the government to its
-08:-41:-34 **5** proof and elects not to testify cannot be considered by you in
02:24:14 **6** any way whatsoever.

-08:-41:-34 **7** To the extent either you thought about whether a
02:24:23 **8** defendant will testify or maybe even had hoped would be the
-08:-41:-34 **9** case, maybe even mentioned, I wonder if so-and-so will testify,
02:24:35 **10** any thoughts that you might have during the course of the trial
-08:-41:-34 **11** or deliberations about the fact that a defendant is not going to
-08:-41:-34 **12** testify, none of that can play any role in your deliberations.
02:24:49 **13** It's not evidence and cannot be considered by you because it
-08:-41:-34 **14** would diminish the protection that we all enjoy. It's probably
-08:-41:-34 **15** one of the most fundamental protections that we enjoy in this
-08:-41:-34 **16** country under our Constitution against government authority and
02:25:04 **17** power because if we were either compelled to testify or even if
-08:-41:-34 **18** you could infer anything at all from the fact we elect not
-08:-41:-34 **19** testify, then the protection afforded to us all by the Fifth
-08:-41:-34 **20** Amendment, the privilege against self-incrimination, would be
02:25:26 **21** diminished. And the consequence would be the rights of all of
-08:-41:-34 **22** us would be placed in jeopardy.

02:25:32 **23** So the fact that none of the defendants has
02:25:35 **24** testified simply can play no role whatsoever. You can decide
-08:-41:-34 **25** the case only on the basis of the evidence that you see and may

-08:41:34 **1** still see in the event that the government decides to offer some
02:25:47 **2** rebuttal, since all three defendants have now rested. And now
-08:41:34 **3** the case is with the government if it wishes to offer rebuttal.
-08:41:34 **4** But once it's done, if it does, all the pieces that you have
-08:41:34 **5** seen or have been heard by you in terms of the evidence upon
-08:41:34 **6** which you must base your decision will be before you. And once
-08:41:34 **7** that is done, do not start making your minds up, don't start
-08:41:34 **8** talking about the case because you still have not received my
-08:41:34 **9** final instructions that will guide your deliberations.

-08:41:34 **10** Okay, Counsel?

02:26:37 **11** Counsel for the government, do you wish to offer
-08:41:34 **12** some rebuttal?

-08:41:34 **13** MR. SOFER: Judge, we will offer a very short
-08:41:34 **14** rebuttal case, less than an hour. Maybe 40 minutes at most.

02:26:48 **15** THE COURT: And are you prepared to do so or do you
-08:41:34 **16** need some time to get prepared for that?

-08:41:34 **17** MR. SOFER: We're prepared, but we very recently
02:26:56 **18** turned over -- we're just going to play clips, Your Honor.
-08:41:34 **19** And, Counsel, I think rightly so, have an opportunity take a
-08:41:34 **20** good look at them before we begin.

-08:41:34 **21** THE COURT: How long do you think they will take?

-08:41:34 **22** Is 15, 20 minutes, maybe take a break, then you go ahead and
-08:41:34 **23** have the government's evidence, then the jury can be excused,
02:27:20 **24** they can have their lunch?

02:27:22 **25** MR. HARTMAN: We need to just address it with the

02:27:24 **1** Court outside the presence of the jury, but I don't think it
02:27:28 **2** will take very long.

-08-41:-34 3 THE COURT: Why don't you do that.

02:27:31 4 Ladies and gentlemen, let me try to give you a
02:27:34 5 sense of the timetable. As I say, if we're able to do so, what
02:27:39 6 I'd like to do is to go ahead and hear the government's rebuttal
-08:-41:-34 7 which should take an hour's conversation with counsel before
-08:-41:-34 8 getting to that point. Then I would anticipate excusing you
-08:-41:-34 9 until next Wednesday. That's appropriate and I think really
-08:-41:-34 10 quite desirable because of developing -- going through the
02:28:09 11 evidence and developing closing argument, which, of course, is a
-08:-41:-34 12 very crucial stage for any client and a lawyer in a case,
02:28:17 13 particularly in a case like this which involves large quantities
-08:-41:-34 14 of evidence and a lot of recorded evidence. It's just going to
-08:-41:-34 15 take a lot of time.

-08:-41:-34 **16** Once again, it's one of those circumstances where
02:28:33 **17** if I didn't give counsel that kind of time to prepare, there
02:28:37 **18** would be two consequences: They would probably take longer,
02:28:41 **19** perhaps even a lot longer in the presentation of closing
-08:-41:-34 **20** arguments which are likely to be quite lengthy in any event;
-08:-41:-34 **21** and also those arguments would not be as well-crafted and as
02:28:53 **22** well-developed and as well-presented as counsel and, ultimately,
-08:-41:-34 **23** you would like.

-08:-41:-34 **24** So my present expectation, subject to some further
-08:-41:-34 **25** consultation with counsel, would be that we would resume on

02:29:08 **1** Wednesday of next week. I would start the session on Wednesday
02:29:12 **2** by reading to you my final jury instructions. It is my
-08:-41:-34 **3** practice to do so before you give closing argument. I would
-08:-41:-34 **4** anticipate the government's argument would probably take the
02:29:23 **5** balance of the day. And, in fact, that may be a day as well as
02:29:27 **6** Thursday where we may work somewhat later, just depending upon
-08:-41:-34 **7** how long the arguments take. I don't set a timetable for
02:29:37 **8** counsel to argue. It's their case and it's their job to do
-08:-41:-34 **9** what they do the best they can to present you their arguments
-08:-41:-34 **10** and take the time that they think is necessary.

02:29:50 **11** I would expect, or hope in any event, that if we're
-08:-41:-34 **12** able to work somewhat later, maybe 5:30, 6:00 even, or perhaps
-08:-41:-34 **13** even a little later -- it may be shorter than that -- but I
-08:-41:-34 **14** would like to have the government complete its argument on
02:30:07 **15** Wednesday so as not to interrupt the evidence presented to you
02:30:12 **16** in its entirety in a single day. I think your understanding
02:30:19 **17** would be enhanced and I think they would prefer to do that as
-08:-41:-34 **18** well. Then on Thursday the defendants also present their
-08:-41:-34 **19** arguments. I expect, I can't promise or guarantee, that they
-08:-41:-34 **20** probably could be presented within a day. And the government
02:30:36 **21** then will have the right to present some brief rebuttal
-08:-41:-34 **22** argument; if we can get that done on Thursday, so much the
02:30:45 **23** better. If we can't, it will occur on Friday.

-08:-41:-34 **24** So for your own expectation and understanding, I
02:30:53 **25** presently anticipate that the case will be in your hands to

-08:41:34 **1** start deliberating sometime a week from this Friday. And then
-08:41:34 **2** the timetable will be entirely up to you. Okay. We will await
-08:41:34 **3** your decision and verdict. I should mention that one thing you
-08:41:34 **4** might want to think about and perhaps talk about when you come
02:31:21 **5** back next week, is whether you want to proceed directly in
02:31:27 **6** deliberations, assuming the case is in your hands sometime
02:31:31 **7** Friday, or to adjourn and come back the following Monday.
-08:41:34 **8** That's the kind of thing that's entirely up to you. Also, when
-08:41:34 **9** you decide to start your deliberations, that's entirely up to
-08:41:34 **10** you, too. If you want to come at 10:00 rather than 8:30 or
-08:41:34 **11** whatever. All of those timetable issues are yours. Okay.

-08:41:34 **12** So Counsel, why don't you come on up and let me
-08:41:34 **13** hear what you have to say.

02:32:02 **14** THE JUROR: Isn't that going to be into the June 6
02:32:04 **15** when you said we were off on that Friday?

02:32:07 **16** THE COURT: It could be. I have to be in
02:32:10 **17** Cleveland. I'm scheduled to be in Cleveland at 3:30 that
-08:41:34 **18** afternoon. We have a newly admitted magistrate judge; he's
-08:41:34 **19** having a formal investiture ceremony which means I would have to
-08:41:34 **20** leave personally by about 1:30 that afternoon. I would still
-08:41:34 **21** be available by telephone in the event you had any questions or
02:32:32 **22** anything came up that you needed to deal with. Were you to
-08:41:34 **23** return a verdict, what I probably would do is have you come back
-08:41:34 **24** the following Monday and take your verdict then or,
-08:41:34 **25** alternatively -- you're right.

-08:41:-34 1 I have another -- other matters tentatively
02:32:53 2 scheduled for that Monday to be in Cleveland. It's my present
-08:41:-34 3 expectation that if that's the way the timetable works, and
02:33:03 4 you're deliberating Friday, to be in the building until 1:30.
-08:41:-34 5 You're welcome to continue deliberating. It's entirely up to
02:33:13 6 you. Unfortunately, in my position as Chief Judge of the
02:33:18 7 district, which has nothing to do with merit or popularity, it's
02:33:21 8 seniority -- and I'm sure my colleagues will confirm it has
-08:41:-34 9 nothing to do with merit -- I really have to be there for that
-08:41:-34 10 investiture. It would be an unfortunate awkward circumstance
-08:41:-34 11 if I weren't there. At least that's my present expectation.
-08:41:-34 12 Thanks for mentioning that issue.

-08:41:-34 13 Counsel why don't you come on up.
02:38:56 14 (The following discussion was had at the bench
02:38:56 15 outside the hearing of the jury:)
-08:41:-34 16 THE COURT: Do you guys know what clips they want
-08:41:-34 17 to play?

-08:41:-34 18 MR. WITMER-RICH: They just handed it to me.
-08:41:-34 19 THE COURT: Do you need time to go over it?
-08:41:-34 20 MR. WITMER-RICH: We would.
-08:41:-34 21 MR. HARTMAN: I don't need time to go over it. I
-08:41:-34 22 just don't think they ought to be allowed to play it.
-08:41:-34 23 MR. WITMER-RICH: I think we can go over it in 15
-08:41:-34 24 minutes probably.
-08:41:-34 25 THE COURT: A real 15 minutes or court time?

-08:41:-34 1 MR. WITMER-RICH: I'll say we can really do it in
-08:41:-34 2 30 minutes, just to be safe.

-08:41:-34 3 MR. HELMICK: Judge, we need about two minutes with
-08:41:-34 4 the government with one request. And that's it.

-08:41:-34 5 THE COURT: What's the problem?

-08:41:-34 6 MR. HARTMAN: Judge, first of all, we didn't put on
-08:41:-34 7 any evidence in our case. I mean, we put on -- put in exhibits
-08:41:-34 8 that we played during cross-examination, the proper time to
-08:41:-34 9 rebut that would have been on redirect examination. Rebuttal.
-08:41:-34 10 The rebuttal case is after our direct case. We had no direct
-08:41:-34 11 case.

-08:41:-34 12 THE COURT: Right.

-08:41:-34 13 MR. HARTMAN: We would object to them playing any
-08:41:-34 14 clip of Mr. El-Hindi. It was never on the reference list to
-08:41:-34 15 begin with. I don't think it's proper for them to be able to
-08:41:-34 16 do it.

-08:41:-34 17 MR. GETZ: This is a clip from a recording that's
-08:41:-34 18 already in evidence. There are clips from this recording that
-08:41:-34 19 were already played for the jury. This specific language is
-08:41:-34 20 very short. It deals with the viewing by Mr. El-Hindi and Mr.
-08:41:-34 21 Griffin of the bomb vest video and basically an acknowledgment
-08:41:-34 22 of they viewed it together, how long it took to download it. We
-08:41:-34 23 think, based on what the defense has indicated that their
-08:41:-34 24 case -- and they told this to the jury -- their case is based
-08:41:-34 25 upon our evidence, and they've asked questions of our witnesses

-08:41:34 1 and made references to and played clips of their own based on
-08:41:34 2 that evidence of the government.

-08:41:34 3 THE COURT: Let me see it.

-08:41:34 4 MR. BOSS: This clip was not played in your direct
-08:41:34 5 case?

-08:41:34 6 MR. SOFER: It was not.

-08:41:34 7 MR. HARTMAN: Nor was it listed on the reference
-08:41:34 8 sheet.

-08:41:34 9 MR. BOSS: So it's new evidence?

-08:41:34 10 MR. SOFER: It's not new evidence. It's part of a
-08:41:34 11 disc that was already entered into evidence. It's part of a
-08:41:34 12 1D-, portions of which were already played in evidence. So I
-08:41:34 13 would disagree with the concept of -- it's not new evidence, but
-08:41:34 14 it will be the first time the jury heard this, yes.

-08:41:34 15 MR. GETZ: It's approximately one minute in length.

-08:41:34 16 THE COURT: I think this should have been played on
-08:41:34 17 direct. I'm not going to let this be played in rebuttal. I
-08:41:34 18 accept Mr. Hartman's argument. Next issue.

-08:41:34 19 MR. HARTMAN: That's the only one.

-08:41:34 20 MR. HELMICK: We have one thing to discuss with the
-08:41:34 21 government. That's it.

-08:41:34 22 THE COURT: Where's --

-08:41:34 23 UNIDENTIFIED SPEAKER: They're reviewing and
-08:41:34 24 talking about the clips right now.

-08:41:34 25 MR. SOFER: The vast majority of the clips, there

-08:-41:-34 **1** was only one for El-Hindi, now there's none. There was one for
-08:-41:-34 **2** Mr. Mazloum only. And the rest of them are all related to Mr.
-08:-41:-34 **3** Amawi, so they do have a larger volume.

-08:-41:-34 **4** THE COURT: How are you coming with that?

-08:-41:-34 **5** MR. IVEY: We've got several clips. We would need,
-08:-41:-34 **6** I would think, about 15 minutes.

-08:-41:-34 **7** MR. SOFER: I think this will take, especially now,
-08:-41:-34 **8** altogether I think we're down to less than a half-hour of
-08:-41:-34 **9** playing tape.

-08:-41:-34 **10** THE COURT: I'm going to send the jury out. We'll
-08:-41:-34 **11** do it, let them go home.

02:39:02 **12** Ladies and gentlemen, it's going to take a bit for
-08:-41:-34 **13** defense counsel to review the proposed rebuttal evidence which,
02:39:13 **14** for very understandable reasons, the government only now has
-08:-41:-34 **15** been able to sort of define and designate because they couldn't
-08:-41:-34 **16** do so -- they couldn't determine what they wanted to offer in
-08:-41:-34 **17** the way of rebuttal until they knew what defendants had offered
02:39:29 **18** in their cases.

02:39:31 **19** Counsel indicates they may be about 15 minutes,
02:39:36 **20** which probably means about 20 or so, or 30 if you're accustomed
-08:-41:-34 **21** to my inability to tell time. But the government also
02:39:47 **22** indicates the actual playing of the rebuttal should be a
-08:-41:-34 **23** half-hour, 45 minutes. So I think what makes best sense,
-08:-41:-34 **24** although it may be a tad inconvenient for you, is to send you
02:39:58 **25** back upstairs. I presently think we'll be done by 12:30. If

-08:-41:-34 1 you order lunch -- of course, you're welcome to have lunch.

-08:-41:-34 2 And if you want to take it with you, that's fine. But at that

02:40:10 3 point we will be in adjournment until next Wednesday morning at

02:40:14 4 8:30. So go on upstairs. Amy will let you know when we're

-08:-41:-34 5 ready to go in the final presentation of evidence.

-08:-41:-34 6 Don't talk about the case, keep an open mind.

02:41:03 7 (Jury out.)

02:41:06 8 (Recess taken.)

03:25:36 9 THE COURT: Are we ready to resume?

03:25:38 10 MR. WITMER-RICH: Yes, I believe so. Starting

-08:-41:-34 11 with the clip the government gave us identified RD-5-69185-2, I

-08:-41:-34 12 think it's the clip from October 21, 2004. The government can

-08:-41:-34 13 talk about why they think it's rebuttal. We don't think it's

03:26:10 14 rebuttal to the evidence that we presented.

03:26:15 15 MR. SOFER: Do you want us to go through these?

-08:-41:-34 16 THE COURT: I guess so.

03:26:19 17 MR. WITMER-RICH: There are only a couple that we

-08:-41:-34 18 have that we're --

03:26:36 19 MR. SOFER: Judge, this particular clip was the

03:26:42 20 longest, I think, of all the clips. As I indicated before, we

-08:-41:-34 21 have a total of approximately 11 minutes of tape-recorded

03:26:53 22 conversations. It relates to Mohammad Amawi telling Darren

03:26:57 23 Griffin that he has family members who used to be in the Army,

-08:-41:-34 24 and that they had a plan and that one of his family members was

03:27:06 25 connected to some Mujahidin in Iraq. He also tells the

-08:41:34 **1** informant, Mr. Griffin, that Mohammad Amawi knew of a plan to
03:27:22 **2** kill the King of Jordan that was something that Mohammad Amawi's
-08:41:34 **3** family members were involved in.

03:27:32 **4** The reason that this is rebuttal, Your Honor, is
03:27:35 **5** that Zaki Amawi testified to some matters that relate to this as
03:27:49 **6** well as the general defense argument through the witnesses,
03:27:52 **7** particularly through Zaki Amawi, said that Mohammed Amawi knew
03:27:59 **8** Darren Griffin was with the FBI. And the notion that if one
03:28:04 **9** knew that Darren Griffin was FBI and then continued to give him
-08:41:34 **10** information which could result in the prosecution, jailing, or
-08:41:34 **11** other legal action against his own family members is
-08:41:34 **12** inconsistent, directly rebuts that argument. The notion that
03:28:22 **13** Mohammad Amawi is giving information to the FBI, essentially he
-08:41:34 **14** believes Darren Griffin is the FBI, and he's implicating members
03:28:31 **15** of his own family, I think clearly is rebuttal.

03:28:39 **16** Ultimately this is in the nature of argument, what
-08:41:34 **17** is rebuttal. I think the government under the law is given
03:28:50 **18** some latitude in essentially making an argument.

03:28:56 **19** MR. WITMER-RICH: This was not elicited by us in
-08:41:34 **20** our direct testimony. The material -- the information about Mr.
-08:41:34 **21** Amawi -- them knowing that Darren Griffin was an FBI informant
-08:41:34 **22** and the bit about -- something about the assassination of King
-08:41:34 **23** Abdullah.

03:29:19 **24** THE COURT: I don't think the source of -- whether
03:29:23 **25** it was direct or cross matters. I've never heard of that.

03:29:27 **1** MR. WITMER-RICH: I guess it doesn't -- I mean, it
03:29:32 **2** doesn't rebut -- the specific testimony about the assassination,
-08:-41:-34 **3** he asked him if he had ever heard Mohammad Amawi threaten King
-08:-41:-34 **4** Abdullah. He said no. The clip about Mohammed Amawi telling
03:29:48 **5** Darren Griffin about some family member of his, about a cousin,
03:29:52 **6** a plan that didn't happen, I don't see how that's rebuttal of
-08:-41:-34 **7** the evidence.

03:29:57 **8** THE COURT: What's the evidence?

03:30:00 **9** MR. WITMER-RICH: I guess the point is if Mohammad
-08:-41:-34 **10** Amawi was saying things that are inculpatory, then any of that
-08:-41:-34 **11** would rebut the claim that when they were in Jordan, which is a
-08:-41:-34 **12** year after this tape happened, the testimony that when they were
-08:-41:-34 **13** in Jordan a year later Mohammad had told his family or that they
-08:-41:-34 **14** suspected that Darren Griffin was an informant. Evidence that
-08:-41:-34 **15** a year earlier that he was saying something inculpatory --

03:30:28 **16** THE COURT: It does seem to be --

-08:-41:-34 **17** MR. SOFER: Again, the argument has been made that
03:30:34 **18** somehow at some time, and I assume this -- this argument was
-08:-41:-34 **19** made in opening statement. I assume this argument will be
-08:-41:-34 **20** carried forth. The tape that was just played here in which
03:30:47 **21** Mohammad Amawi is eliciting money from Darren Griffin, all of
-08:-41:-34 **22** this is connected to an argument by the defense which is Darren
03:30:59 **23** Griffin was known by Mohammad Amawi to be working for the FBI.
-08:-41:-34 **24** There's no date that's been set by the defense. If they want
-08:-41:-34 **25** to stipulate that he knew that as of a particular date, that's

03:31:08 **1** one thing. The government certainly should be given an
-08:-41:-34 **2** opportunity to rebut that argument.

-08:-41:-34 **3** Again, I agree with Counsel, we probably could
03:31:19 **4** have, I think, under the law we would be permitted to put in a
03:31:22 **5** much larger volume of rebuttal clips. We haven't done that.
03:31:28 **6** We've tried to limit it as much as possible. The fact that a
-08:-41:-34 **7** witness testified that Mohammad Amawi knew at a particular time
-08:-41:-34 **8** that Darren Griffin was with the FBI does not foreclose the
03:31:42 **9** argument about when -- about him knowing it previously. Again,
03:31:47 **10** if the Amawi team wants to stipulate that was the first and only
03:31:51 **11** time Mohammad Amawi knew that and that's all the evidence shows,
-08:-41:-34 **12** then we wouldn't put in this clip. But I'm confident that's
-08:-41:-34 **13** not what they're going to argue to this jury.

03:32:00 **14** THE COURT: Let me ask: Do you know as of what
-08:-41:-34 **15** time frame you'll be contending?

03:32:08 **16** MR. WITMER-RICH: We'll need to go back through the
-08:-41:-34 **17** entire record. In our case we did not put in any evidence that
03:32:14 **18** predates, certainly, the first of January of '05 that would
-08:-41:-34 **19** support this contention. There may be evidence of that from
-08:-41:-34 **20** what happened in the government's case. But in our case we
03:32:26 **21** didn't introduce evidence from, as I recall, from this time
-08:-41:-34 **22** period or before supporting that contention.

-08:-41:-34 **23** THE COURT: What's the date of this?

03:32:37 **24** MR. WITMER-RICH: October 21, 2004.

-08:-41:-34 **25** THE COURT: What was the apparent date of those

03:32:46 **1** pictures we saw yesterday, the ones in the convenience store?

03:32:50 **2** MR. SOFER: I think they were February of '05,

-08:-41:-34 **3** Judge. But again, I wouldn't expect counsel to draw a bright

03:32:57 **4** line in the sand. They want to make this argument. The

-08:-41:-34 **5** government should be permitted to -- again, they opened on this;

03:33:04 **6** it's clear that throughout the course of the case they've

03:33:06 **7** developed this as part of their defense. And I think the

-08:-41:-34 **8** government is entitled to show some evidence. But again, we're

03:33:13 **9** not talking about 37 clips lasting hours and hours.

-08:-41:-34 **10** THE COURT: I'm not going to let it be played

-08:-41:-34 **11** because I don't think it is appropriate rebuttal, that it

03:33:24 **12** properly rebuts the proposition for which it's offered because

-08:-41:-34 **13** of its uncertainty and the distance between the time that was

03:33:32 **14** referenced in their case.

-08:-41:-34 **15** MR. SOFER: Well, then let me ask you this, Judge:

-08:-41:-34 **16** If the defense argues that -- in summation that Mohammad Amawi

03:33:40 **17** knew that Darren Griffin was working for the FBI, and he knew it

-08:-41:-34 **18** at particular dates, will you let us reopen our case then?

03:33:49 **19** That's what I'm looking to avoid.

-08:-41:-34 **20** THE COURT: I would imagine so. My point is, if

-08:-41:-34 **21** you're going to argue at about this time there's evidence that

-08:-41:-34 **22** he was aware of government surveillance, then it's fine. I'm

-08:-41:-34 **23** doing this because of the temporal distance between -- Mr. Ivey.

03:34:13 **24** MR. IVEY: I didn't want to interrupt you. I just

-08:-41:-34 **25** want to stop this notion that the defense is developing this.

-08:41:34 1 If the Court will recall I didn't say in opening statement that
-08:41:34 2 Mr. -- that Mr. Amawi knew Mr. Griffin is FBI. The government
-08:41:34 3 called in its case pro witnesses to bring -- we did not.

03:34:34 4 THE COURT: It came out on cross-examination of Mr.
03:34:38 5 Amawi's father, that he had said to his father that Mr. Griffin
-08:41:34 6 was 90 percent FBI and ten percent Muslim. But that was okay
-08:41:34 7 with him. And I assume it was unexpected testimony that the
-08:41:34 8 government did not anticipate. It wants to rebut that. My
-08:41:34 9 point simply is, I don't think this particular evidence rebuts
03:35:03 10 that.

03:35:05 11 MR. IVEY: I agree.

03:35:07 12 THE COURT: Now, on the issue of the timetable as
-08:41:34 13 to when Mr. Amawi may have been aware, again, I'm not sure that
-08:41:34 14 that's not part of your case. So I don't think -- even that I
-08:41:34 15 don't think it rebuts it. I'm not so sure it would be
-08:41:34 16 appropriate to reopen the case. The evidence is what it is.
-08:41:34 17 You didn't stand up and say as of the second time they met, Mr.
03:35:33 18 Amawi was of the view that Griffin was an FBI agent. That
-08:41:34 19 would be entirely different. But you didn't do that. I'm not
-08:41:34 20 sure that you at all raised that.

03:35:48 21 MR. SOFER: Judge, the time for them to raise that
-08:41:34 22 is in summation. They'll argue in summation that the
-08:41:34 23 evidence -- for instance, we spent a lot of time with the Amawi
-08:41:34 24 team where Mr. Amawi's allegedly lying to Mr. Griffin while a
-08:41:34 25 conversation was going on and mistranslating a particular

03:36:07 **1** portion. The same concept -- and I beg to differ with Counsel.
-08:-41:-34 **2** They did open on this. I distinctly remember Mr. Ivey
03:36:14 **3** saying --

03:36:15 **4** THE COURT: In any event, this should have been in
03:36:17 **5** the direct case.

03:36:20 **6** MR. IVEY: I want to make something clear.

-08:-41:-34 **7** There's a difference between playing --

-08:-41:-34 **8** THE COURT: I'm ruling in your favor.

03:36:28 **9** MR. IVEY: All right. I'll clear it up at the
-08:-41:-34 **10** right time. But I didn't want the notion that the government
-08:-41:-34 **11** called two police officers to say Mr. Amawi was aware, thought
03:36:36 **12** the government was following him. There's a different argument
-08:-41:-34 **13** between he's playing Mr. Griffin for financial benefits
-08:-41:-34 **14** and knowing Mr. Griffin is an FBI agent. And the former is, I
03:36:46 **15** think, what I opened with.

03:36:48 **16** MR. SOFER: I agree.

03:36:49 **17** THE COURT: In any event, I've made my ruling. I
03:36:53 **18** agree with defense counsel on this.

03:36:57 **19** MR. WITMER-RICH: On the clip RB-4369185-2, am I
-08:-41:-34 **20** correct that this is a clip that fairly follows the clip that we
03:37:11 **21** just played for the jury, follows it fairly soon after that?

03:37:19 **22** MR. SOFER: I believe it does, yes.

03:37:22 **23** MR. WITMER-RICH: I request that that be made clear
03:37:24 **24** to jury.

-08:-41:-34 **25** THE COURT: The same day, same conversation?

03:37:28 **1** MR. WITMER-RICH: Like a minute later.

03:37:30 **2** THE COURT: That's fine. That's fair. Okay.

03:37:36 **3** MR. WITMER-RICH: The clip RB-18-69185-5. This is

-08:41:-34 **4** from a tape that we have not heard anything from yet, correct?

-08:41:-34 **5** MR. SOFER: Not correct.

03:37:57 **6** MR. WITMER-RICH: In any event, immediately or soon

-08:41:-34 **7** after the end of this clip, within a minute or so, there's a

03:38:09 **8** section in Arabic. There's -- during this conversation they're

-08:41:-34 **9** talking about Mohammad and Darren Griffin are sitting in front

-08:41:-34 **10** of the computer and there are persons over the internet talking

-08:41:-34 **11** in the background in Arabic. And some of that, I think, may be

03:38:25 **12** captioned on this. I'm not sure. Soon after the end of this

03:38:29 **13** particular clip there's a section that's captured in Arabic that

-08:41:-34 **14** on the government transcript is represented as unidentified male

03:38:36 **15** talking the background. But it's audible what the person is

-08:41:-34 **16** saying. They haven't translated it. Again, it's not on this

03:38:45 **17** particular clip. On their transcript they haven't translated

-08:41:-34 **18** that section. What is said during that little section, the

-08:41:-34 **19** person overseas saying to Sadaf -- I believe there's evidence

03:39:08 **20** that Sadaf is the name that Mr. Amawi used for internet

03:39:14 **21** conversations. He says to Sadaf: I don't care if there are

-08:41:-34 **22** even one or two, or if it's one. I don't care that there is

-08:41:-34 **23** someone beside you recording. I don't care whatsoever.

03:39:29 **24** THE COURT: I missed the last word.

03:39:31 **25** MR. WITMER-RICH: I don't care that there is

-08:-41:-34 **1** someone beside you recording. I don't care whatsoever. Let
-08:-41:-34 **2** him record. I am clarifying truth. He says a little bit
-08:-41:-34 **3** more. Then he says: Anyone who wants to record, let him
-08:-41:-34 **4** record.

-08:-41:-34 **5** We had debated on trying to play this clip through
-08:-41:-34 **6** our translator. We didn't do that. We don't have her here to
-08:-41:-34 **7** put this into evidence. But it very quickly follows this clip
-08:-41:-34 **8** where they're talking about finding explosives, downloading
-08:-41:-34 **9** explosives, and so forth. Then there's this clip of the person
03:40:05 **10** overseas saying to Sadaf: I don't care if the person next to
-08:-41:-34 **11** you is recording.

03:40:10 **12** So we would request that that section be included
-08:-41:-34 **13** in the clip the government wants to play. We can provide our
-08:-41:-34 **14** translation to their translator if he wants to try to listen to
-08:-41:-34 **15** this, it's a short passage, and decide whether that's accurate.

03:40:24 **16** MR. SOFER: Judge, let me make clear why it is
03:40:30 **17** we're putting this particular recording in. Here we have --
03:40:34 **18** this is something that directly rebuts evidence that counsel
-08:-41:-34 **19** tried to elicit, I believe yesterday, in which Mohammad Amawi's
-08:-41:-34 **20** sitting at the computer, Darren Griffin is there, Mohammad Amawi
03:40:50 **21** is translating things that are going on. This is an actual
03:40:54 **22** video, which is what's really important actually to the
-08:-41:-34 **23** government.

-08:-41:-34 **24** What happened yesterday was the translator for the
03:41:03 **25** Amawi team said, well, on the third time that he translated, he

-08:-41:-34 1 translated something incorrectly. The government's
03:41:09 2 cross-examination, you may recall, is you couldn't see actually
-08:-41:-34 3 what Mohammad Amawi was doing. The video that matters most to
-08:-41:-34 4 the government here, because it's clear in the clip, is Mohammad
-08:-41:-34 5 Amawi continues to do multiple things with his computer at the
-08:-41:-34 6 same time while the audio was just playing in the background.
-08:-41:-34 7 We think that's important for obvious reasons. The fact that
-08:-41:-34 8 something else was said by this other unknown male voice later
-08:-41:-34 9 on, I don't think is -- doesn't go to the rule of completeness.
-08:-41:-34 10 It doesn't go to any other issue. It's probably hearsay.

-08:-41:-34 11 The Sadaf question, I'd have to go back and look to
-08:-41:-34 12 see how clear it is, whether or not, in fact, this person's even
-08:-41:-34 13 talking to Mohammad Amawi or about Mohammad Amawi. If defense
03:42:01 14 decided not to put it in and would now like us to put their
-08:-41:-34 15 evidence in for them, we are not inclined to do that. There is
-08:-41:-34 16 no argument under the rule of completeness. And what's
-08:-41:-34 17 important to the government is not only the substance of this
03:42:14 18 conversation as it is, what you can actually see on the video,
-08:-41:-34 19 which supports the government's position that, in fact, the
03:42:22 20 evidence elicited by the defense does not accurately describe
-08:-41:-34 21 what's going on on the computer.

03:42:28 22 MR. WITMER-RICH: As to the rule of completeness, I
-08:-41:-34 23 mean, the section immediately -- we have the section where --
-08:-41:-34 24 that I just kind of approximated for you. I was quoting the
-08:-41:-34 25 relevant parts. Immediately following that the person says:

03:42:43 **1** What's he talking about, Jihad? And there's a silence;
03:42:49 **2** Mohammad does not respond. Then they go on to other
-08:-41:-34 **3** conversations. So it both is relevant because of what the guy
03:42:56 **4** says and because of, once again --

03:43:01 **5** THE COURT: What's the date?

03:43:05 **6** MR. SOFER: January 27, '05. This is the same 1D.

-08:-41:-34 **7** I would also --

03:43:12 **8** THE COURT: Tell me what's being said that you want
-08:-41:-34 **9** to have played in addition. The only request is to let the
-08:-41:-34 **10** clip run a bit longer; is that correct?

03:43:24 **11** MR. WITMER-RICH: Correct.

-08:-41:-34 **12** THE COURT: Tell me again what that covers.

03:43:27 **13** MR. WITMER-RICH: It says -- I'm going to skip the
-08:-41:-34 **14** very beginning. It's just talking about things. Then he
-08:-41:-34 **15** says: Oh, my brother, Sadaf; Sadaf, listen to me; may God
03:43:47 **16** reward you with goodness. Then there's some timing.

03:43:52 **17** Patience, patience. God bless you. I don't care even if
-08:-41:-34 **18** there are two or it is one. I don't care that there is someone
03:44:00 **19** beside you recording. I don't care whatsoever. Let him
03:44:04 **20** record. I am clarifying truth. And he talks a little bit
-08:-41:-34 **21** about --

03:44:10 **22** THE COURT: Who's saying this?

03:44:13 **23** MR. WITMER-RICH: It's an unidentified male.

03:44:17 **24** THE COURT: What's the probative value there?

-08:-41:-34 **25** MR. WITMER-RICH: It --

03:44:23 **1** MR. BRYAN: Your Honor, first of all, I think it
-08:-41:-34 **2** must be clear what the government's clip is talking about.
-08:-41:-34 **3** It's talking about bombs and different types of munitions and
03:44:33 **4** things like that. So then you hear also what is relevant, and
03:44:37 **5** I agree with Mr. Sofer it is relevant because Mohammad Amawi is
03:44:40 **6** constantly typing on the computer at the same time. They can
-08:-41:-34 **7** see that with the video, Mohammad Amawi typing on the computer
03:44:47 **8** at the same time people are discussing bombs and explosives and
-08:-41:-34 **9** things like that. So in response to that -- and correct me if
-08:-41:-34 **10** I'm wrong -- in response to that is this clip where this
03:44:59 **11** gentleman is apparently responding to Mohammad Amawi because --
03:45:03 **12** THE COURT: That's the whole problem. We don't
03:45:05 **13** know what has caused him to make that statement. So --
03:45:09 **14** MR. BRYAN: Your Honor, I apologize. This is
-08:-41:-34 **15** something that is -- has been a concern of mine for a very long
-08:-41:-34 **16** time and that is that I've known that there has been extremely
03:45:23 **17** exculpatory evidence on behalf of Mohammad Amawi that we,
03:45:27 **18** because of coming into the case late, because of literally
03:45:30 **19** having problems with our transcriptions up until -- we didn't
-08:-41:-34 **20** get our transcriptions all in until the government's case was
-08:-41:-34 **21** well in advance and things of that nature. Then the person who
-08:-41:-34 **22** translated this for us became unavailable as a witness because
-08:-41:-34 **23** of some immigration concerns and problems and things of that
03:45:46 **24** nature. So scrambling we tried to get our other translator to
-08:-41:-34 **25** be able to listen to this excerpt but because of, again, time

03:45:53 **1** limitations and stuff, we weren't able to locate this excerpt
03:45:57 **2** for her. But if the government's going to be permitted --
03:46:01 **3** And January 27 is a very pivotal date in this case
-08:-41:-34 **4** as it relates to what's going on. The government has played
-08:-41:-34 **5** evidence from January 27, we played evidence from January 27.
-08:-41:-34 **6** And if the government's permitted to play this clip, the
-08:-41:-34 **7** extension of this clip, someone responding to all those things
03:46:19 **8** that were just said, and he addresses Mohammad Amawi as Sadaf --
-08:-41:-34 **9** Agent Coats, or I think it was Darren Griffin actually that
03:46:27 **10** testified Mr. Amawi's PalTalk name is Sadaf. And the FBI 302
03:46:34 **11** say Mohammad Amawi's PalTalk name is Sadaf. So, again, we're
03:46:39 **12** not offering it for the truth of matter asserted. We're
-08:-41:-34 **13** offering it under the rule of completeness because it completes
03:46:46 **14** that clip the government wants to play.

-08:-41:-34 **15** In addition to that, we would submit that it's not
-08:-41:-34 **16** hearsay because we're not offering it to prove the truth of the
-08:-41:-34 **17** matter asserted -- that is someone is taping him -- but that
-08:-41:-34 **18** that gentleman said that apparently is something in response to
-08:-41:-34 **19** something that Mohammad Amawi typed.

-08:-41:-34 **20** THE COURT: That's the whole problem. We don't
-08:-41:-34 **21** know what it was that person was talking about. And I think
-08:-41:-34 **22** that the inferential chain is too attenuated to permit that
03:47:14 **23** segment to be played. If there were some portion of that clip
03:47:24 **24** in which -- and this was -- this is audio, correct me if I'm
-08:-41:-34 **25** wrong, and it may very well be technological incompetence, but

-08:41:34 1 was it possible for Mr. Amawi to be conversing with this person?

03:47:46 2 MR. BRYAN: Yes, he was.

03:47:48 3 MR. WITMER-RICH: The government's theory, the

-08:41:34 4 earlier clip we played --

-08:41:34 5 THE COURT: I'm sorry. But if there's nothing in

-08:41:34 6 that exchange that has Mr. Amawi saying, be careful what you

-08:41:34 7 want to say or this may be being recorded, or you never know

-08:41:34 8 what recording's occurring or whatever, but if in the course of

-08:41:34 9 exchange that evidence isn't there for whatever reason, the

03:48:22 10 inferential string that you are trying to attach to this

03:48:28 11 evidence, in other words that the speaker was aware because of

03:48:34 12 something Mr. Amawi had told him, that recording might be

03:48:41 13 occurring, and that Mr. Amawi told him that because he believed

-08:41:34 14 that Mr. Griffin was an undercover agent engaging in recording,

-08:41:34 15 the attenuation is Mr. Griffin.

-08:41:34 16 MR. BRYAN: I would submit, if we're going to talk

03:49:02 17 about January 27, we could play the whole tape of January 27.

-08:41:34 18 And if you did that you would determine that this is a PaTalk

03:49:09 19 conversation that Mr. Amawi is intimately involved in. And, in

-08:41:34 20 fact, if you go even further, there's another reference to

03:49:16 21 Sadaf: Oh, poor Sadaf --

03:49:19 22 THE COURT: That may be so. But even so, even if

-08:41:34 23 that person -- that person may simply himself apprehend that

03:49:31 24 recording is occurring and not caring. Okay. I'm sorry, but

-08:41:34 25 the point I'm making is the chain of inferences that connects

-08:-41:-34 1 this to what it is you want to establish is simply too
03:49:47 2 attenuated. And you've made your proffer, and that's my
-08:-41:-34 3 ruling.

03:49:51 4 MR. WITMER-RICH: Very briefly, Your Honor. It's
03:49:53 5 the same inference that the government is going to ask the jury
-08:-41:-34 6 to draw in the clip which was played yesterday which is we're
-08:-41:-34 7 saying what you hear, you know, is being mistranslated. And
-08:-41:-34 8 the government is going to claim there's some instant message
-08:-41:-34 9 conversation going on simultaneously of which we do not have
03:50:10 10 evidence; the government has no evidence of it and we have no
-08:-41:-34 11 evidence of it.

03:50:13 12 MR. SOFER: Actually, we do have evidence, Judge.
03:50:16 13 We have the testimony of a witness that was there. That's the
-08:-41:-34 14 evidence. That's the critical difference, is we had a witness
-08:-41:-34 15 testify that's what was happening.

03:50:25 16 MR. WITMER-RICH: There is no evidence of the
03:50:27 17 substance of the conversation that would support the
03:50:29 18 government's contention of the instant message conversation
03:50:32 19 supporting the government's contention that he is translating an
-08:-41:-34 20 instant message conversation, translating what he is hearing
03:50:39 21 over the audio. So the government is asking the jury -- is
-08:-41:-34 22 going to ask the jury to draw that inference, that the substance
-08:-41:-34 23 of that instant message conversation of which there is no
-08:-41:-34 24 evidence, is actually what was going on.

-08:-41:-34 25 It's the same inference now that we are doing the

03:50:54 **1** opposite of, which is, as Your Honor explained, there is instant
 2

03:51:01 **3** Amawi notified this individual that he was being recorded.

-08:-41:-34 4 There is no evidence of that. The government doesn't have it

03:51:06 **5** and we don't have it. And the tables essentially are turned

-08-41-34 6 here. We are now saying that -- that's the same evidentiary

03:51:15 7 link that is missing, I think, as was in --

03:51:18 8 MR. SOFER: Judge, this is two cases of wanting to

-08:-41:-34 9 have your cake and eat it too. They put a witness on who

-08-41-34 10 basically says no, that's not what's happening. What's really

-08-41-34 11 happening is whatever you can hear is essentially all that's

03:51:32 **12** going on in the computer. That's what their witness wanted to

03:51:35 **13** testify to. We now want to rebut that by put anything in

-08-41-34 **14** testimony. They now say no, you have to put in this other

-08-41-34 15 evidence which shows that, in fact, there was something else

03:51:44 **16** going on in the background; which is Mohammad Amawi being able

-08-41-34 17 to instant message or type into the computer instead of talking

-08:-41:-34 **18** into the computer.

03:51:52 19 Seco

03:51:56 20 THE COURT: The fact he is typing is

03:52:01 21 MR. SOFER: Yes.

03:52:03 22 THE COURT: So

23 having to have this bit on there. And I remain of the view

24 the inferential chain is connecting this portion of the clip

25 to the point you want to make is too long and too abstract.

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03:52:24 **1** MR. BRYAN: Your Honor, if I may, for the record.
-08:41:-34 **2** I understand Your Honor's ruling. But just as I may for the
03:52:30 **3** record, part of the problem that we had developing this area and
03:52:33 **4** being in a position to be able to explain it more thoroughly to
-08:41:-34 **5** Your Honor is the fact that the government's transcript -- and I
-08:41:-34 **6** would submit it to Your Honor based upon --

-08:41:-34 **7** THE COURT: Well, let me simply remind you that
03:52:46 **8** it's my understanding that your client is himself bilingual and
-08:41:-34 **9** fluent and you had him available to review the various
03:52:58 **10** translations. And I made that point early on in the case.
03:53:04 **11** And that doesn't require your client to testify or in any way
-08:41:-34 **12** for you to even disclose attorney/client communication because
-08:41:-34 **13** to the extent there may have been an error or mistake in the
-08:41:-34 **14** translation that was offered by the government, or even no
03:53:25 **15** translation at all, seems to me that the means are available to
-08:41:-34 **16** the defense to say -- believe this conversation, this excerpt,
-08:41:-34 **17** this statement means X.

03:53:38 **18** MR. BRYAN: Understood, Your Honor. As I told
-08:41:-34 **19** Your Honor before, the best resource that I have in helping Mr.
03:53:44 **20** Amawi defend himself was Mr. Amawi himself. I would submit for
-08:41:-34 **21** the record that that never occurred in this case after Mr.
-08:41:-34 **22** Terez's absence from the case. By the time Mr. Terez left the
-08:41:-34 **23** case, there weren't any government transcripts yet. And I'm
-08:41:-34 **24** not -- and the record will become clear at some point in time.
-08:41:-34 **25** Mr. Amawi's attorneys, the Federal Defender's Office getting

-08:-41:-34 **1** involved in this case, in fact, refused to go over these tapes
-08:-41:-34 **2** with Mr. Amawi. It was only when we got this case very late in
-08:-41:-34 **3** the game that this process started to occur. We had a
03:54:20 **4** tremendous amount of stuff to go over in a short period of time.
03:54:23 **5** This is something Mr. Amawi shared with me.

-08:-41:-34 **6** THE COURT: I don't want to hear anything that
-08:-41:-34 **7** would disclose attorney/client communication.

03:54:30 **8** MR. BRYAN: I understand. This is something
03:54:32 **9** defense has been aware of for more than just today, Your Honor.
-08:-41:-34 **10** It's something that we've had problems with because of the fact
-08:-41:-34 **11** that -- because of the problems with the translator not being
-08:-41:-34 **12** able to -- et cetera. The problem -- or the reason I'm stating
-08:-41:-34 **13** this for the record is the government provided many, many, many
03:54:54 **14** Arabic translations of things that were easily heard including
-08:-41:-34 **15** PaTalk conversations. I just find it kind of interesting that
-08:-41:-34 **16** where there is a PaTalk conversation -- audibility is not even
-08:-41:-34 **17** in question with this, Your Honor. Where there is a PaTalk
03:55:09 **18** conversation on a critical date in the case that clearly
-08:-41:-34 **19** identifies somebody saying to Mr. Amawi, or referring to Sadaf,
03:55:17 **20** that the government knows is Mr. Amawi's screen name, referring
03:55:21 **21** to Sadaf, that they -- and it's clearly audible, that somehow
03:55:26 **22** that the translation was never made.

03:55:28 **23** I'm submitting for the record, Your Honor, that I
-08:-41:-34 **24** believe that the government knew that that was there, that
03:55:33 **25** translation was there. They knew that it was damaging to their

-08:-41:-34 1 case. What they turned over to the defense was something that,
-08:-41:-34 2 in essence, hid exculpatory evidence, that we were able to
-08:-41:-34 3 determine.

-08:-41:-34 4 THE COURT: I disagree. I'm sorry, I think the
03:55:47 5 record has been made.

03:55:49 6 MR. BRYAN: Just finally, Your Honor, this is
03:55:52 7 critical, I believe, to the theory of our case to show that Mr.
03:55:55 8 Amawi was suspicious of Mr. Griffin at an earlier date than when
-08:-41:-34 9 his father has introduced this issue of being suspicious.

03:56:03 10 THE COURT: If that's so, then we get back to the
-08:-41:-34 11 issue of the other clip, and I excluded that because of the
-08:-41:-34 12 temporal disconnect.

-08:-41:-34 13 But in any event, that clip is in the record,
-08:-41:-34 14 correct?

03:56:16 15 MR. SOFER: All of these clips, Judge, are in the
-08:-41:-34 16 evidence that's already been admitted.

-08:-41:-34 17 THE COURT: So they're there for the parties to
-08:-41:-34 18 point to and argue.

03:56:27 19 The next problem, if any?

03:56:31 20 MR. WITMER-RICH: Nothing, Your Honor.

03:56:33 21 THE COURT: Okay.

03:56:35 22 MR. SOFER: So for the Amawi clips then, I want to
03:56:39 23 be clear, it's RB-54-69185-1, RB-43 -- this is from April 7.
03:56:49 24 I'm sorry, RB-54-69185-1 was from April 25, RB-43-69185-2 is
-08:-41:-34 25 from April 7. RB-18-69185-5, January 27, '05. RB-57-69185-4

03:57:17 **1** from April 29, '05, is the Mazloum-related clip. 64-69185-1
-08:41:-34 **2** from May 6, '05, relates to Mr. Amawi. And finally, Judge,
03:57:33 **3** 64-69185-3 from May 6, '05, also relates to Mr. Amawi. That
-08:41:-34 **4** would be the full extent of the government's rebuttal.

-08:41:-34 **5** I would -- once again, it is clear to me, Judge,
03:57:47 **6** that these lawyers are going to argue that at a time prior to
-08:41:-34 **7** August of 2005, Mohammad Amawi believed Darren Griffin to be
-08:41:-34 **8** working for the FBI.

03:58:01 **9** THE COURT: Is that so? And if so --
03:58:05 **10** MR. IVEY: Your Honor, I'm going to say this again.
03:58:09 **11** Suspicious and potentially making an argument like I did in
-08:41:-34 **12** opening statement that he saw a financial gain by telling Mr.
03:58:20 **13** Griffin what he wants, I think, is fair game. We did not
03:58:25 **14** interject that Mr. Amawi knew he was with the FBI. That is
03:58:29 **15** evidence they brought out, and they called the police officers
-08:41:-34 **16** to say that. That's not what I'm saying. So no, the answer is
-08:41:-34 **17** no.

03:58:38 **18** THE COURT: Also presumptively whatever Mr. Amawi,
03:58:43 **19** Sr., said were based upon a conversation he had while
03:58:48 **20** visiting -- during that visit to Jordan. Okay. Let's go to
03:58:53 **21** work.

-08:41:-34 **22** MR. DOUGHTEN: For the record, we want to renew our
03:58:57 **23** 29. I think we have to do that before the rebuttal.
-08:41:-34 **24** THE COURT: I think you're correct. I deem all
03:59:03 **25** previous Rule 29 motions made to be renewed. Thank you. I

-08:41:34 **1** thought about that during one of the breaks. It will be the
03:59:10 **2** same ruling.

03:59:12 **3** MR. BOSS: Thank you, Judge.

03:59:13 **4** THE COURT: Amy, let's get the jurors.

04:01:27 **5** (Jury enters the courtroom.)

04:01:28 **6** THE COURT: Ladies and gentlemen, I apologize.

04:01:31 **7** It's my understanding the government's rebuttal of playing a set
-08:41:34 **8** of clips also will take about ten minutes, then we'll adjourn.

04:01:40 **9** MR. SOFER: We've taken some time and we've saved
04:01:44 **10** some time. If I may go to the podium, Judge.

04:01:49 **11** THE COURT: Uh-huh.

04:01:53 **12** MR. SOFER: Your Honor, at this time the

-08:41:34 **13** government's going to play a series of very short clips. And

-08:41:34 **14** then we will rest our rebuttal, please. The first clip is from

-08:41:34 **15** April 25 of 2005 and has been designated RB, which stands for

-08:41:34 **16** rebuttal.

04:02:13 **17** April 25, 2005 has been designated RB-54-69185-1.

04:02:26 **18** It's probably about 40 seconds long.

04:03:52 **19** (Audio is played.)

-08:41:34 **20** MR. SOFER: The second clip is from April 7, 2005.

04:03:57 **21** RB-4369185-2.

04:04:20 **22** (Audio is played.)

04:06:01 **23** MR. SOFER: I think, am I right, Counsel, that this
-08:41:34 **24** was the one that was part of the segment that you also played,
04:06:11 **25** that it's connected?

04:06:13 **1** MR. WITMER-RICH: Yes, I believe so.

04:06:16 **2** MR. SOFER: The next one is from January 27 of

04:06:21 **3** 2005. It's been designated RB-18-69185-5. It's a video and

-08:-41:-34 **4** audio recording.

04:06:33 **5** (Video is played.)

04:08:07 **6** MR. SOFER: The next clip is April 29, 2005. It's

-08:-41:-34 **7** designated 57-69185-4 -- it's actually RB-57-69185-4 is what it

-08:-41:-34 **8** will be.

04:08:41 **9** (Video is played.)

04:08:54 **10** MR. SOFER: The next clip is from May 6, 2005.

-08:-41:-34 **11** Although it doesn't appear yet on the screen it will be

04:09:02 **12** designated RB-64-69185-1.

04:09:17 **13** (Audio is played.)

04:10:14 **14** MR. SOFER: The next clip is also from May 6, 2005.

-08:-41:-34 **15** It's designated 64, it will be RB-64-69185-2.

04:11:35 **16** (Audio is played.)

04:11:38 **17** MR. SOFER: The last clip is doing to be designated

04:11:41 **18** RB-64-69185-3. It's also from May 6, '05.

-08:-41:-34 **19** (Audio is played.)

04:12:47 **20** MR. SOFER: And that, Your Honor, completes the

04:12:49 **21** United States Government's rebuttal case. And we rest.

-08:-41:-34 **22** THE COURT: Okay. And, ladies and gentlemen, that

04:12:58 **23** completes the presentation of evidence in the case. And as I

04:13:02 **24** previously indicated, you will resume next Wednesday morning at

-08:-41:-34 **25** 8:30 with the jury instruction and the government's closing

04:13:11 **1** argument.

-08:-41:-34 **2** In the meantime, I remind you to avoid any exposure

-08:-41:-34 **3** to any media reports about the case. Keep an open mind.

04:13:26 **4** You've heard all the evidence, but you still haven't heard two

-08:-41:-34 **5** very crucial components that are necessary for you to begin

04:13:34 **6** deliberations; that is, of course, my jury instructions and the

04:13:39 **7** parties' closing arguments. So don't talk about the case,

-08:-41:-34 **8** don't think about the case, just put it to one side. Come back

04:13:47 **9** refreshed and hopefully briefly it will be in your hands.

-08:-41:-34 **10** Thank you very much. We'll see you next Wednesday morning.

04:14:27 **11** (Jury out.)

04:14:40 **12** MR. IVEY: Your Honor, at the right time, my team

04:14:43 **13** jumped on me. I wanted to make a clarification so there's no

04:14:46 **14** misunderstanding. I'd like to do that on the record.

-08:-41:-34 **15** Mr. Sofer brought up it was clear to him that if

04:15:00 **16** there's an argument that somehow Mr. Amawi knew Mr. Griffin was

04:15:03 **17** an FBI agent, they should be able to reopen their case --

04:15:07 **18** THE COURT: They should be able to?

04:15:09 **19** MR. IVEY: Reopen their case.

04:15:11 **20** THE COURT: That evidence is already in the record.

04:15:14 **21** It's already in the record.

04:15:17 **22** MR. IVEY: Pardon me?

04:15:18 **23** THE COURT: The evidence that I did not permit them

-08:-41:-34 **24** to replay is already in the record and it can be used, so it's

04:15:25 **25** not necessary to, quote, reopen the case.

-08:-41:-34 1 MR. IVEY: Thank you.

04:15:31 2 THE COURT: With regard to your exhibit, when do
-08:-41:-34 3 you think you'll be -- where is that list?

04:15:37 4 MR. WITMER-RICH: We will give the government all
-08:-41:-34 5 of the clips that we're going to introduce before we leave
04:15:44 6 today, so that if they have any objections they can lodge those.
-08:-41:-34 7 And the remaining exhibits, we'll try to make sure they have a
-08:-41:-34 8 list of those as well.

04:16:08 9 THE COURT: Now, in terms of -- when will you be
04:16:17 10 providing jury instructions? The way I operate is that each
04:16:23 11 side prepares its proposed instructions and then they're
-08:-41:-34 12 exchanged. I expect the parties, and I hope the parties, will
04:16:34 13 try to work out any disagreements. And then we sit down
04:16:38 14 together and I resolve whatever needs to be resolved. I'd like
-08:-41:-34 15 to do that tomorrow if at all possible. As I say, Friday I'm
-08:-41:-34 16 not here. Tuesday gets to be a little -- I think those of you
-08:-41:-34 17 who are presenting closing arguments are going to be amidst in
04:17:02 18 that. The jury instructions can make a difference to some
04:17:09 19 extent.

04:17:10 20 MR. WITMER-RICH: We're not quite done. I think
04:17:13 21 we can provide the government with at least a draft copy by late
-08:-41:-34 22 this afternoon. Assuming the government can provide what they
-08:-41:-34 23 have at that point as well.

04:17:22 24 MR. TERESINSKI: We think we'll be done this
-08:-41:-34 25 evening with ours. To be clear, this will be the joint defense

-08:-41:-34 1 jury instructions for all three?

-08:-41:-34 2 MR. WITMER-RICH: Correct.

-08:-41:-34 3 MR. SOFER: We hope to be done with ours either

-08:-41:-34 4 this afternoon or sometime this evening, certainly by tomorrow

04:17:40 5 morning.

-08:-41:-34 6 THE COURT: Should we plan to try to get together

-08:-41:-34 7 sometime tomorrow afternoon?

-08:-41:-34 8 MR. SOFER: That would be fine with the government.

04:17:46 9 MR. WITMER-RICH: I think that makes sense, Your

04:18:03 10 Honor.

04:18:03 11 THE COURT: How about maybe 1:00 tomorrow

04:18:06 12 afternoon?

04:18:08 13 MR. SOFER: That's fine with us, Judge.

04:18:26 14 THE COURT: Are the defendants able and willing to

-08:-41:-34 15 indicate to the government whether any of you anticipate seeking

-08:-41:-34 16 an entrapment instruction?

-08:-41:-34 17 MR. HARTMAN: On behalf of Mr. El-Hindi we do not

-08:-41:-34 18 seek an entrapment instruction.

-08:-41:-34 19 MR. HELMICK: On behalf of Mr. Mazloum we will not

04:18:46 20 be seeking an entrapment instruction.

04:18:48 21 MR. WITMER-RICH: On behalf of Mr. Amawi we will

-08:-41:-34 22 not be seeking an entrapment instruction.

04:18:54 23 MR. SOFER: We have an application with respect to

-08:-41:-34 24 Mr. Mazloum, and I'll let Mr. Herdman make it if it's acceptable

-08:-41:-34 25 to Your Honor. We can make it without other counsel here.

-08:41:34 1 It's up to Your Honor.

04:19:07 2 MR. HERDMAN: I'll be brief. The government would
-08:41:34 3 move at this time for the Court to review the release order with
-08:41:34 4 respect to Mr. Mazloum. This is the conclusion of the evidence
-08:41:34 5 in case. Your Honor, when you originally issued the order
-08:41:34 6 releasing Mr. Mazloum in August, you took into account in
04:19:30 7 weighing the evidence against Mr. Mazloum. The government's
-08:41:34 8 position is at the completion of the evidence in this case
-08:41:34 9 there's a substantial likelihood of conviction of Mr. Mazloum.

-08:41:34 10 The weight of the evidence is substantial.

04:19:41 11 Moreover, Your Honor, I would point out during the
-08:41:34 12 defense case there was evidence elicited from the defense's own
-08:41:34 13 witnesses with respect to Mr. Mazloum's intent and capability he
-08:41:34 14 has with respect to returning to Lebanon. And the government
-08:41:34 15 at this point in time, Your Honor, based on all the evidence
-08:41:34 16 that's been presented at trial thus far, formally moves the
-08:41:34 17 Court to review that release order and to detain Mr. Mazloum.

04:20:07 18 MR. HELMICK: Your Honor, if I may briefly, a few
-08:41:34 19 things. First just to respond directly to what the government
-08:41:34 20 said. I believe that that evidence with regard to Mr. Mazloum's
04:20:19 21 intent is fairly dated. And the later evidence that was
-08:41:34 22 brought before Your Honor from September 29, 2005 and January
04:20:28 23 30, 2006 indicates that plans were off and that he would be
-08:41:34 24 seeking -- trying to seek citizenship and that that's the
-08:41:34 25 evidence that's been presented for the record.

-08:-41:-34 1 In addition, Your Honor, I'd simply note since his
-08:-41:-34 2 release on August 31 of last year there have been no problems
04:20:47 3 whatsoever. I see Mark Miller is here from Pretrial Services
04:20:51 4 should the Court have any questions, as I alerted him that the
-08:-41:-34 5 government might be making this request today. He has secured,
-08:-41:-34 6 as the Court is aware, an electronic monitor. He is under
04:21:02 7 supervision as a result that. He has court-appointed
04:21:05 8 custodians on his behalf. There is family and property and
-08:-41:-34 9 close family members that have posted on his behalf. His
-08:-41:-34 10 passport and those of his immediate family members has been
04:21:18 11 secured. His passport has been expired, which creates another
04:21:23 12 problem as a renewal as a foreign national.

04:21:27 13 The Court heard arguments last August. The Court
04:21:30 14 devoted two days to hearing on bond on this case on August 30
-08:-41:-34 15 and 31 of last year. You received a mountain of government-
-08:-41:-34 16 provided transcripts with regard to their best shot for a case,
04:21:41 17 if you will, with regard to evidence that was presented. The
04:21:44 18 Court indicated you had reviewed those transcripts. You said
-08:-41:-34 19 that you were very familiar with the evidence and arguments were
-08:-41:-34 20 made by counsel at that time. There is no mandatory life
04:21:55 21 sentence or anything of that kind in this case, Your Honor,
04:21:58 22 should the defendant be convicted of either of the two counts or
-08:-41:-34 23 both of two counts.

04:22:05 24 Also I note, Your Honor, this is a particularly
-08:-41:-34 25 critical time. I don't know where the defendant would be

04:22:10 **1** housed if the Court were to revoke his bond. The marshals made
04:22:15 **2** Herculean efforts with Your Honor's assistance to get the other
04:22:19 **3** two defendants placed at the Lucas County jail. If he were
-08:-41:-34 **4** taken now, taken to Milan, it would cause hardship to him and to
04:22:26 **5** us with regard to the preparation of this important closing
04:22:30 **6** argument in this important case. I suggest to the Court that
-08:-41:-34 **7** now is not the time, nor is it warranted, for his bond to be
-08:-41:-34 **8** revoked. Thank you.

-08:41:34 **14** I'll also note, quite candidly, despite, as firmly
-08:41:34 **15** as I am confident in the integrity of this jury and its
04:23:07 **16** commitment to doing the right thing and refraining, I'm as
04:23:14 **17** confident as I've ever been the jury is following the
04:23:18 **18** instructions I've given to it, refraining from exposure to
04:23:23 **19** anything in the media, not talking about the case, I really feel
04:23:28 **20** sort of a bedrock certainty that if ever there was a jury that
04:23:33 **21** has taken its duty and considered only what it should consider,
04:23:36 **22** it's this jury. On the other hand, were I to revoke Mr.
-08:41:34 **23** Mazloum's release order today, that no doubt would be published
-08:41:34 **24** in the media and draw media attention, and that clearly would
04:23:56 **25** communicate, it seems to me, the possibility that it would

-08:-41:-34 1 create -- the possibility that the media and anyone exposed to
-08:-41:-34 2 the media might somehow draw a conclusion about my view of the
-08:-41:-34 3 weight of the evidence, and that I felt the jury --
04:24:18 4 I don't have a view as to the weight of the
-08:-41:-34 5 evidence. I've refrained deliberately from developing that
-08:-41:-34 6 kind of view. I made clear in my instructions to the jury they
-08:-41:-34 7 shouldn't try to read my mind and take some direction from me.
-08:-41:-34 8 Although I think the risk is quite slight that any of the
04:24:37 9 jurors, A, might be exposed to that or would draw that
-08:-41:-34 10 inference. Nonetheless, that is a concern of mine as well. So
04:24:47 11 I think that the impediments that would confront Mr. Mazloum in
-08:-41:-34 12 seeking to flee and accomplishing flight successfully are very
04:24:59 13 great. They're not watertight necessarily, but such things
04:25:04 14 never are. But I have very little doubt that Pretrial Services
04:25:09 15 would alert the authorities and the government and counsel
-08:-41:-34 16 immediately if there were a break in the alarm from the monitor,
-08:-41:-34 17 and given the security that we all face going through the
-08:-41:-34 18 airports and so forth, the likelihood that flight could be
04:25:31 19 accomplished through flight, I think, is very slight. Under
-08:-41:-34 20 all the circumstances I don't think it's appropriate to revoke
04:25:45 21 the bond.
-08:-41:-34 22 Anything else?
-08:-41:-34 23 MR. SOFER: That's all, Judge. Thank you.
04:25:48 24 THE COURT: Thank you.
04:25:49 25 MR. DOUGHTEN: Just a final Rule 29.

04:25:53 1 THE COURT: Pardon me?
04:25:54 2 MR. DOUGHTEN: Just the final Rule 29.
04:25:56 3 THE COURT: Once again, I deem the Rule 29 motions
-08:-41:-34 4 to be renewed. And, once again, I will take the arguments
04:26:07 5 previously made to have been repeated. And the motion also be
-08:-41:-34 6 taken under advisement.

04:26:17 7 MR. BOSS: Thank you on behalf of Defendant
04:26:23 8 El-Hindi.

04:26:23 9 THE COURT: I'll see you tomorrow for the
-08:-41:-34 10 instructions. Can you please favor me with copies of whatever
04:26:32 11 instructions you put together? Thank you.

12 - - -

13

14 C E R T I F I C A T E

15

16 I certify that the foregoing is a correct transcript from the
17 record of proceedings in the above-entitled matter.

18

19 /s Tracy L. Spore _____

20 Tracy L. Spore, RMR, CRR Date

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